

1997

Lex Scripta Et Lex Non Scripta: Tensions Between Law and Language in Late Fourteenth-Century England and Its Literature.

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**LEX SCRIPTA ET LEX NON SCRIPTA:
TENSIONS BETWEEN LAW AND LANGUAGE IN LATE
FOURTEENTH-CENTURY ENGLAND AND ITS LITERATURE**

A Dissertation

Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Doctor of Philosophy

in

The Department of English

by
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May 1997

UMI Number: 9803583

UMI Microform 9803583

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ABSTRACT

This work explores the connections between Middle English literature and transitions occurring within the English legal system. It focuses on the way Chaucer and the Gawain-poet negotiate the tension between the legal potency of the written word and the spoken word. As the common law contains an ongoing negotiation between written and unwritten forms of law, the dissertation discusses the function and significance of the tension between the lex scripta and the lex non scripta. It argues that the increasing displacement of oral and written language in the legal realm is a source of considerable cultural anxiety, and this anxiety is expressed in the works of literature chosen for discussion.

Entering into the current re-evaluation of the Middle Ages, the dissertation addresses historical, cultural, and literary issues of contemporary relevance. The first chapter argues that the Wife of Bath manipulates hidden texts in a rhetorical strategy which parodies that of the medieval courtroom, not the pulpit. Chapter two demonstrates that the General Prologue's portrait of the Sergeant of the Law points to the legal profession's subversive use of its influence over the formation of the lex non scripta in the area of land law, an influence which facilitated profound social changes, and subverted the written laws created by parliament. The third chapter presents the thesis that Chaucer's Pardoner is a textual exhibitionist and his Prologue and Tale depict the abuse of texts, and the fetishization of texts and writing. Chapter four demonstrates that the Canon's Yeoman's Prologue and Tale expresses the fear of an emptiness in texts, and also questions whether written language has, or can have, any

authentic source. The final chapter argues that Sir Gawain and the Green Knight challenges the thesis of the certainty of the oral oath by deprivileging the determinacy of oral communication.

INTRODUCTION

This dissertation explores the connections between Middle English literature and transitions occurring within the English legal system during the late medieval period. Its central focus is how the legal system's relationship to writing is conceived of and depicted in Middle English poetry. It explores the way Chaucer and the Gawain-poet conceive of and describe the tension between the legal potency of the written word and that of the spoken word. As the common law contains an ongoing negotiation between written and unwritten forms of law (which will be referred to in their technical names as the lex scripta and lex non scripta), the dissertation discusses the manifestations and significance of this tension in the medieval literary imagination.

Legal questions have particular importance in the latter half of the fourteenth century insofar as they are connected with a cultural transition away from the ancient legal and social system based on oral contracts and customs and towards a culture which is increasingly dependent upon writing. The opposition between two modes of discourse, the oral and the written, is reflected in the interlocking network of power struggles between classes, sexes, and newly forming professions. Jesse Gellrich has described the situation created by the intersection of these two modes of discourse, the oral and the written, as one of "displacement." He writes that in this period: "writing is commonly masked as oral, and just as often spoken language is veiled as inscription--one channel of language is the guise or disguise of the other" (x). In my interpretation of this situation I see the concept of mutual "disguise" as deeply problematic in the

legal realm. The document, rather than being seen as a written creation which stands on its own, open for interpretation, is frequently seen in this period as a signifier of something else, something which went before it. I will argue that the increasing displacement of oral and written in the legal realm is a source of cultural anxiety, and this anxiety is expressed in the works of literature chosen for discussion.

M.T. Clanchy notes that in the thirteenth century "documents did not immediately inspire trust" (294); however, texts were simultaneously held in extreme veneration and turned into quasi-magical objects. However, texts used as legal documents seldom inspired the same trust as those texts created and used for other purposes. As feudal societies are based on the legal principle of "the word as bond," (to use Douglas Canfield's term) considerable anxiety is likely to arise in a transitional period during which members of the society are uncertain of what exactly constitutes "the word" that binds them together. The question troubling the medieval common law is whether the written word is as binding, or binding in the same way as the spoken word. There is evidence that legal documents inspired a great deal of anxiety amongst various strata of society.

Evidence of this anxiety about the increasing and often confusing dependence upon written legal documents is evident in the Peasants' Revolt of 1381 and in the later deposition of Richard II. These events represent the culminating moments when pre-existing tensions led to revolutionary action. Furthermore, from a legal standpoint they are very significant and complex "trials" of the bonds of late medieval society. The revolt and deposition test the pecking order of English society and force revelations

about who holds real power, and how it is held by them. These two events are framed in highly legalistic terms by the participants in them, who in both cases primarily wish to establish the nature of their legal rights. The participants in the Revolt strive to establish what their customary rights are in relationship to the lords and landowners, while in the process of the deposition proceedings both the King and Parliament strive to determine the balance of power between themselves. The nature of the lex scripta (the written statutes) and the lex non scripta (the laws established by the custom of the courts), and the balance of power between these two forms of law are questioned over the course of these events.

At his coronation ceremony Richard "swore on the cross to confirm the laws and customs of the people" (Jones 14). However, what exactly constituted "the laws and customs" was not easy to determine. For instance, Richard H. Jones notes that in the coronation ceremony, "especially noteworthy were the pains taken to remove any doubt that the laws which the king swore to confirm were those which had been established in the reign of Edward the Confessor, not those which had been ordained by the legislation of Edward I," and further, an alteration was made to the coronation oath established in 1308 for Edward II "whereby the king swore to uphold whatever laws the people might elect for the glory of God. For these phrases there was substituted in the coronation oath of 1377 an ambiguous reference to the laws of the church" (Jones 14-15). From the opening of his reign those supporting and surrounding Richard intended for him to escape being bound by the laws and customs of the people; however, the underlying problem is the uncertainty of what constituted these laws and

customs. Were they established by Parliament's spoken word, or by the written laws it created? Or, was law established by the decisions of the judges whom Richard consulted on his rights and obligations, or by the immemorial usage of custom filtered down from the past, or by the word of the King himself? At the heart of this confusion is the common law's negotiation of the supposed certainty of the written law (the lex scripta), and the flexibility and apparent uncertainty of the unwritten law based on custom (the lex non scripta).

An examination of the rebels' actions during the Revolt of 1381 exemplifies a crippling legal confusion. While I am in agreement with Steven Justice's thesis that the general populace did have a degree of literacy and legal knowledge, Justice ignores the fact that the rebels' legal demands and ideology reveal evidence of naiveté and confusion. During the Revolt, the rebels often demanded documents which did not exist. As in their belief in the legal value of the Domesday Book, the populace subscribed to a mythic belief in ancient texts and documents which could set them free from villeinage. Yet, it appears that such documents never existed. The rebels were attempting to reform society by returning to a previous, lost order of things; and, I would argue, rather than being legally astute, the uprising was motivated by nostalgia for an Edenic past where words held true and justice prevailed. The rebels longed for a mythic past, "an 'honest' England" which predated the legal dependence upon texts and writing. But, paradoxically, this past could be reconstructed and validated only by reference to ancient texts and documents of mythical legal status. In their seizure of, and demand for, documents the rebels were looking, I propose, for the equivalent of

what we could call "written oaths." They desired documents which would constitute evidence of the oral ties which once bound them to their land. They believed that the original documentary evidence surviving from the oral past offered them legal redress, when in reality this is extremely unlikely. They saw in their vision of the past a time when the oral word was the bond, and the written document only a recording of what was spoken, not the bond itself, as it was gradually becoming. That spoken promises and legal contracts appeared to be two separate and distinct things seems to be at the heart of the rebels' legal anxieties and confusion.

In this dissertation I explore how Chaucer and the Gawain-poet express their understanding of, and interest in, the legal complexities created by the anxiety-provoking relationship between the unwritten and the written in the medieval common law. There exists within the Canterbury Tales, I argue, an ongoing negotiation of, and confrontation with, legal issues, and especially with the relationship between the oral and the written. Sir Gawain and the Green Knight depicts an interlocking set of "trials" in which the bonds of a society are held up to the test. Its plot is predicated on oath-making and contractual obligations. That the contracts entered into are both oral and ambiguously indeterminate provokes my interest in this poem, as the work in many ways presents a counterbalance to the questioning of the proper uses of writing and texts which pervades Chaucer's work. The contrasting attitudes of these authors toward oral and written "bonds" reveals a tension which, I believe, was prevalent and unresolved in their time and culture.

This dissertation enters into the current re-evaluation of medieval history which, following Foucault's distinction between 'total history' and 'general history,' attempts not to draw "all phenomena around a single centre," but to "deploy the space of a dispersion" (10). In other words, it follows a new trend of examining the complexities of medieval society rather than attempting to impose a single, unifying focus upon the age or its literature. In the process of this analysis the dissertation addresses medieval cultural and literary issues of current academic interest and relevance. The first chapter argues that in her Prologue the Wife of Bath manipulates hidden texts in a rhetorical strategy which parodies the medieval courtroom, not the pulpit. Chapter two demonstrates that the General Prologue's portrait of the Sergeant of the Law points to the legal profession's subversive use of its influence over the formation of the lex non scripta regarding land law, an influence which facilitated profound social changes, and subverted the written laws created by parliament. The third chapter presents the thesis that the Pardoner's Prologue and Tale depicts the abuse of written language. The Pardoner's performance is seen as a response to the increasing textualization of contracts and agreements in the late Middle Ages. Chapter four argues that the Canon's Yeoman's Prologue and Tale expresses the fear of an emptiness in texts, as the Yeoman's performance questions whether written language has, or can have, an authentic source. This attitude aligns with the suspicions about, and resistance to, codification in the common law, which in theory is based on custom and experience, not texts or writing. The final chapter argues that Sir Gawain and the Green Knight challenges the thesis of the certainty of oral oaths by de-privileging the supposed

determinacy of oral communication. The interlocking trials of the spoken word in Sir Gawain ultimately reveal that there is no ideal, oral, legal past to which society can strive to return.

The main argument of this dissertation is that Chaucer and the Gawain-poet are intensely concerned with the negotiation of the oral and the written in their poetry, and this concern reflects and parallels an underlying cultural anxiety about the relationship between the oral and the written in the English legal system. This work focuses on the similarity between the authors' poetic concerns and practices and legal anxieties about the use of written language in the construction of social bonds.

CHAPTER ONE

The "Buried" Legal Case of the Wife of Bath's Prologue

In the Prologue to her Tale the Wife of Bath argues that according to Saint Paul, wives have been given authority over their husbands. She summarizes her argument in the following way:

I have the power duryng al my lyf
Upon his propre body, and noght he.
Right thus the Apostel tolde it unto me,
And bad oure housbondes for to love us weel.
Al this sentence me liketh every deel (III.158-162)¹

There is some ambiguity in the Wife's reference to Paul's words as a "sentence," a term which in Middle English has a number of meanings, including: "a personal opinion," "doctrine, authoritative teaching," "a judgement rendered by God, one in authority, a court," "a punishment imposed by a court," "a statute, law," "a prophecy," "the contents of the Bible," and, "a practice, custom" (M.E.D. PT.S.4.438-441). We see that the word has both legal and religious denotations. Immediately following the above-quoted lines, the Pardoner responds to the Wife's remarks by exclaiming: "Now dame . . . by God and by Seint John!/ Ye been a noble prechour in this cas" (III.164-65). Like "sentence," the word "cas" has a variety of meanings, such as: a "state of affairs," "an event, incident," "an action, a deed," "an instance of something, example," "any civil or criminal question contested before a court of law," "the side of one party in a trial," or, "an accusation, a charge" (M.E.D. Vol.2.74-76). While a number of the definitions of "cas" are specifically legal, none are religious.

Interpretations of the Wife's Prologue have assumed from the context that only the religious meanings of "sentence" are relevant and that the Wife is giving a mock sermon, but it is possible that she is deliberately playing on the disjunction between the religious and legal meanings of the term. The Pardoner refers to the Wife as a "prechour"; and yet, he conjoins this label with the statement that the Wife is arguing a "cas." The "sentence" of the Wife can also be a legal suit or cause, "a question contested before a court of law," as preachers do not argue "cases," but lawyers do. The Pardoner's choice of words suggests that the Wife may be presenting a legal case for the listeners' judgement, and not a sermon for their edification. Thus, I contend, the Wife of Bath presents in her Prologue not a mock sermon, but a mock legal case which parodies the rhetoric of the courtroom not the pulpit.

While I agree with Lee Patterson and Charles E. Shain that the Wife is in control of her rhetoric rather than powerless before it, and does not suffer from what one critic called "a certain mental blindness" (Wood, Country of the Stars 174), I differ about what type of rhetoric she is in control of. Patterson argues that the Wife offers a sermon joyeux in the Prologue, but he bolsters his argument with some points that undermine his assessment of her rhetorical strategy. He claims that the Wife "preempts the very language of accusation" in her "mastery of masculine modes of argument" ("For the Wyves" 678). However, does a sermon joyeux embody "the language of accusation"; or, do Patterson's words create another disjunction between legal and religious terminology? And, what could more embody a masculine mode of argument than the rhetoric of the courtroom, stemming as it does from the agonistic tradition of

the Greeks and Romans? The Wife's strategy of turning other people's words against them is surely more appropriate to the courtroom than the pulpit.

Like Patterson, Shain is convinced that the Wife's Prologue results from the fact that Chaucer, like all of his contemporaries, "was steeped in the lore of pulpit rhetoric" (235). Shain goes so far as to posit that "Chaucer had inevitably to make use of that powerful and pervasive instrument of medieval culture, the sermon" [italics added] (236). However, the trial, in both the ecclesiastical and secular courts was becoming another "powerful and pervasive instrument of medieval culture," and it is inevitable that Chaucer, having performed the functions of magistrate and civil servant, would also have been steeped in this powerful cultural form.

Although the Wife's Prologue has been assumed to mirror pulpit rhetoric, it can more logically be seen as mirroring the rhetoric of the courtroom. Furthermore, this interpretation can explain the Wife's use of terminology from the legal lexicon which critics in the "sermonist" camp must ignore. In their analyses of her form of argumentation, Shain and Patterson overlook the disjunctions between the Wife's use of legal and theological terminology. The form of the Wife of Bath's rhetoric follows common law practices of presenting a case, and some of the terminology of the Prologue can only be fully understood and appreciated from an examination of fourteenth-century legal procedure.

Derek Persall has noted that during his lifetime Chaucer saw "the increasing use of litigation and the increasing sophistication of legal procedure" (The Life 248). He concludes, "the law, which had once functioned and been thought of as a last resort

when all means of reconciling disputes had failed, was now becoming a first resort" (The Life 248). It is possible that the Wife is mocking in her Prologue the newly-evolving forms of legal procedure and argumentation, and their practitioners. The agonism of her discourse may be a comment upon the growing need for disputes to be settled in the courtroom, as the twelfth-century legal reforms of Henry II led to the increasing litigiousness of late medieval England.

Some legal background and definitions are first necessary to facilitate this discussion. Sir Matthew Hale's History of the Common Law serves well to define the common law:

The Laws of England may aptly enough be divided into two kinds, viz. Lex Scripta, the written Law; and Lex non Scripta, the unwritten Law: For although . . . all the Laws of this Kingdom have some Monuments or Memorials thereof in Writing, yet all of them have not their Original in Writing; for some of those Laws have obtained their Force by immemorial Usage or Custom, and such Laws are properly call'd Leges non Scriptae, or unwritten Laws or Customs. (3)

The common law of England is unique in its use of unwritten law; unlike legal systems which are derived from the Roman tradition, it is not completely codified. As Henry Sumner Maine explains, "the theoretical descent of Roman jurisprudence from a code, the theoretical ascription of English law to immemorial unwritten tradition, were the chief reasons why the development of their system differed from the development of ours" (7). The Leges non Scriptae create an indeterminate quality in the English Law, as well as an instability, which in its positive aspect is an ability to adapt to changing social and political circumstances. There is, however, a certain tension created by the

ambiguous differentiation between the written and unwritten aspects of the law. Maine has stated that:

there is no such thing as unwritten law in the world. English caselaw is sometimes spoken of as unwritten, and there are some English theorists who assure us that if [a] code of English jurisprudence were prepared, we should be turning unwritten law into written As soon as the Courts at Westminster Hall began to base their judgements on cases recorded, whether in the year books or elsewhere, the law which they administered became written law (12-13).

Nevertheless, in the Middle Ages the distinction between lex scripta and lex non scripta remained valid. M.T. Clanchy holds that "one persistent medieval tradition rejected written law" ("Law and Love" 51). He cites as evidence the statement of Bracton, the thirteenth century legal writer, who declares: "law comes from nothing written" (I.19).

The lex non scripta is determined, and decisions made, by examining prior cases and thereby establishing the "custom of the courts." A modern legal writer explains:

The idea of looking back to prior cases for guidance is as old as our professional courts. . . . During the Middle Ages . . . prior cases were also inspected, but rarely revered. Law was not found in a single case; rather, a group of cases illustrated the true law. Law, in this sense, was the total custom of the courts. (Kempin 103)

However, it has been established by legal historians that the citation of cases in medieval courts took a necessarily vague form. Arthur R. Hogue explains:

In the Middle Ages the courts were unquestionably guided by traditions and customs built up in the handling of case after case. But there was not the citation of cases in the modern fashion. Rather, citation took the form of professional memory and ultimately "the only authority cognizable by the court was the record of the case" [Allen 189]. But this record, it must be remembered, might be buried under several hundred pounds of parchment rolls and consequently be very difficult to find; to "search the record" was a serious task which the court would not lightly assign to anyone. (190)

While Percy Winfield disagrees with Hogue's position and has put forth the argument that the medieval court records do not present "sufficient evidence of the practice of citing cases" (153), C.K. Allen has demonstrated that the courts in the thirteenth and fourteenth centuries did make their judgements based upon the citation of, and precedents set by, case law (183-197). He summarizes:

the foundations of our case-law do most plainly exist in these medieval reports [the Year Books]. Their very raison d'être was the instructive value of the decided case, or the arguments and pleadings leading to it. The judges were well aware, even from early times, that their decisions were shaping the law. (197)

In the early years of the fourteenth century, for example, a counselor reminds the court that "the judgement to be by you now given will be hereafter an authority in every quare non admisit in England" (Year Book 32 Edward I, Rolls Series, 32). In 1327 Judge Scrope reminds counsel that, "the King has commanded us that we do law and reason according to that which has been done in like case; wherefore consider whether there is any case like to this matter" (Year Book I Edward III 24, Mich. pl. 21). There is evidence to be found, as well, to substantiate Hogue's point that counselors relied on memory. In the following exchange Judge Stanton challenges counsel to substantiate his case reference:

Stanton: Where have you seen a guardian vouch on a writ of dower?
Miggeley: Sir, in Trinity term last past, and of that I vouch the record.
Stanton: If you find it, I will give you my hat.
(Year Book 4 Edward II, Selden Society vi, 168)

Finding the case record, as the judge must well have known, would have been a nearly impossible task. Thus, the law is being formed in the late Middle Ages by reference

to past decisions, but the record of these cases remains "buried" in a number of potentially problematic ways.

Legal records existed in three written forms: as writs, plea rolls, and Year Books. The writs, by which proceedings were instituted, were filed in a way which suggests that "they were always intended to be capable of being consulted without difficulty" (Hector, "Reports" 269). The plea rolls, which Hogue is specifically referring to above, give a record of all court proceedings case by case; however, they by no means give a complete record of each proceeding, as a modern court record would. The rolls "entirely ignore everything in the proceedings they record that can be regarded as abortive or irrelevant" (Hector, "Reports" 268). The Year Books, on the other hand, are a select compilation of case proceedings, which can provide differing information about the cases from the plea rolls. While the Year Books were not "buried" in the literal sense that the plea rolls most probably were,² they were still a fairly limited source of information about "the record of the case." Hogue explains that "the Year Books often present only fragments of the case as it was argued in court" (190).

Furthermore, the Year Books bring up other aspects of the "buried" nature of the case record. First of all, as T.F.T. Plucknett explains, "the Year Books were never published annually like modern law reports, nor were they ever published in the year which they report" (Studies 330). Secondly, the selection of cases recorded in the Year Books appears to be profoundly biased. Plucknett notes that there is a:

curious predominance in those books of a very few names--presumably of those who were soon to be described as serjeants, and . . . these

prominent lawyers seemed to conduct practically all the vast litigation of the realm In short, the Year Books seem to be openly partial to the serjeants. (Studies 336)

Thirdly, the Year Books had a very limited circulation. After the reign of Edward II manuscripts are quite few in number, and Plucknett surmises that "it is obvious that they all emanate from one source" (Studies 337). In his study of the history of the legal profession, Plucknett concludes that:

The number of the later Year Book manuscripts surviving seems to suggest that they were only destined for use by a very restricted public at present it seems clear that they did not circulate among the profession at large, but were rather a close and intimate manifestation of the work of the order of serjeants, being most probably designed for their especial, perhaps for their exclusive use. (Studies 337)

As the Order of Serjeants was always very small in number,³ it must be assumed that the Year Books cannot have been an accessible source of court records for the legal profession in general. Thus, despite the publication of the Year Books, the case records still remained for all practical purposes "buried" in their piles of parchment rolls. Despite the amount of documentation available, Hogue's point seems valid, that memorization of case records was required of the professional lawyer.

The "buried" nature of the case record, the incomprehensibility of the medieval legal vocabulary, and the extreme formalism of procedure increasingly served to exclude lay people from direct access to the justice system. G.O. Sayles notes:

It was always open to anyone at any time to plead his own case in court: he might even disavow his counsel and continue the action himself. Obviously, as law became more complicated, the services of an expert became advisable, if not essential, for many a case was lost through lack of proper advice. (xxxii)

Pollock and Maitland describe medieval law as composed of an "intricate mass of procedural rules" (229). In Winfield's interpretation of the case records: "procedure is so predominant that we wonder at times where the point of substantive law is to be found in the web of writ, declaration, counterplea, double plea, and judgement" (155). Thus, pleading one's own case in court, while potentially possible, is clearly becoming an ill-advised course of action.

Winfield claims that a lawyer who was not well versed in procedure and pleading "would have lost his client's case a dozen times over before discussion of the point of substantive law in issue were reached" (156). He summarizes that "formalism in procedure is not a disease of early law, but is the life-blood of it" (156). The monetary aspects of this situation must have been significant as pleading played a large part in a medieval lawyer's business (Allen 185). There are sound business reasons for the increasing intricacy of the rules of pleading, as the increasing legal formalism created and maintained the lawyer's professional monopoly. Because judges were recruited exclusively from the bar, there was little reason for the bench to counteract the tendency towards procedural intricacy and thus go against the interests of the profession it inevitably shared with the counselors. This is one of the ways in which the practice of recruiting judges from the bar, which is unique to the common law, had a considerable influence on shaping the English legal system.

Possibly due to its increasing monopoly over the courts, the legal profession incited suspicion and hostility. May McKisack notes, for instance, that during the Peasants' Revolt on June 13, 1381, "prisons were opened and in Cheapside a number

of lawyers, Flemings and other unpopular persons . . . were summarily beheaded" (410). The movement toward literacy, which created the written case record and the mass of required writs, expanded the role of the counselors. Nevertheless, the unpopularity of the profession may be related to the form of oral argumentation it uses and thus to the profession's alignment with rhetoric, not, as is the most obvious assumption to be drawn, to its alignment with writing and literacy.

The considerable amount of legal documentation available from the fourteenth century gives us an understanding of the procedural rules followed in the courts. Legal records from the reigns of Edward II, Edward III, and Richard II are accessible to modern scholars in the printed volumes of the Selden Society and the Ames Foundation. The information the reports give about fourteenth-century legal practice has, however, particular strengths and weaknesses. The early reports show patterns of pleading and argument, say little about rules of process or substantive law, and give very little idea of how trials were actually conducted. Nevertheless, the arguments and pleadings used are shown "in nearly pure dramatic form" so that it is possible to decipher the system of pleading and the patterns of reasoning used (Sutherland 182). The vocabulary used in the pleadings is difficult for a modern reader to follow; however, Donald Sutherland has surmised from his examination of them that "the logic of argument in the fourteenth century was not essentially different from ours" (182).

Legal reasoning, both modern and medieval, depends upon a balancing of findings on both the law which applies in a case, and the facts which apply (or can be proven). As a result, legal reasoning has always been problematic for logicians.

Duncan Kennedy describes one of the logical problems inherent in the conventions of legal argumentation:

From the great mass of facts, the lawyer selects those that he or she thinks can be cast as "relevant" to one of the preexisting rule formulae that together compose the corpus juris. Then the lawyer works to recast both facts and formula so that the desired outcome will appear compelled by mere rule application. (184)

A further convention is that "argument and counterargument are presented as simply 'correct' as applied to the general question, without this presentation binding the arguer in any way on the nested sub-question" (Kennedy 190). Kennedy concludes his dissection of legal reasoning by asserting:

Legal argument has a certain mechanical quality, once one begins to identify its characteristic operations. Language seems to be "speaking the subject," rather than the reverse. It is hard to imagine that an argument so firmly channelled into bites could reflect the full complexity either of the fact situation or the decision-maker's ethical stance toward it. It is hard to imagine doing this kind of argument in utter good faith, that is, to imagine doing it without some cynical strategy in fitting foot to shoe. (192)

The problem with legal reasoning stems from the fact that it depends upon characteristic manouvers which often result in the adoption of logical fallacies. Lawyers' cases tend to be formulated in an illogical and deceptive manner, as the Wife of Bath's case is.

The Wife uses argumentative strategies similar to those used in legal proceedings in order to make a case about the status of the wife in the marriage partnership. The same vagueness of citation necessitated by the "buried" nature of the case record in the judicial system is notable in reference to the Wife's use of citation in the first part of the Prologue. The case she argues is founded upon doctrine which is proven by reference to the writings of St. Paul, but typically the Wife cites only one half of a

"sentence" and ignores the other. She deliberately leaves the other half "buried" in the text which contains it. For instance, in lines 158-162, quoted at the opening of this chapter, the Wife uses two statements of Paul as her authority. The first reads, "The wife has not the power of her own body, but the husband; and likewise also he hath not power of his own body, but the wife" (I Cor 7.4). She uses this passage to affirm her "sentence:" "I have the power duryinge al my lyf/ Upon his propre body, and noght he" (III.158-9), while ignoring the corollary statement. Similarly, she makes use of Paul's commandment, "Husbands, love your wives" (Eph 5.25), while suppressing the fact that this "sentence" is embedded in a text which also commands, "Wives, submit yourselves unto your own husbands, as unto the Lord" (Eph 5.22). The Wife exploits the "buried" nature of the Scriptural case record she cites in an effort to establish her own laws of marriage--laws which are based upon "custom," not the written "laws" of the New Testament. By doing this she pleads for the an interpretation of marriage based on the lex non scripta, rather than the lex scripta of Paul. From the point of view of English jurisprudence, this is proper procedure.

The Wife mediates between the written laws of marriage found in the New Testament and the "customs" of marriage established by experience. Just as the "custom of the courts" is determined by examining the record of past cases, the Wife of Bath finds the "custom of marriage" by examining a group of "cases"--her own five marriages. We can make an alignment between her use of "experience" and the legal use of "custom." In common law, "custom" is determined by the study of past usage; in other words, custom is derived from the experience of the courts in the application

of the law. In the Prologue the Wife creates a common law case for following the dictates of custom (her experience) rather than of written law (the writings of Paul, Jerome, and other anti-female writers).

The Wife presents her argument without addressing the counterargument, thereby following another standard practice of legal argumentation. "I quitte hem word for word" (l.422) she says, proclaiming that she is presenting one side of a battle of words, not dialectically balancing the sides of a logical argument. Like a counselor pleading a case, she engages in a verbal contest which has distinctly well-drawn lines of demarcation. Verbal ammunition, and not fairness, is the primary consideration in the formulation of her argument. As a sermon, the Wife's speech would be absurd; however, as an example of legal reasoning it is quite typical.

The Wife's use of Paul involves channelling him into "bites" that automatically become rules, which are then presented as simply "correct" as applied to the general question of a wife's authority over her husband. The other halves of the quotations do not have to be addressed, as her assertions do not have to be binding on "the nested sub-questions." The Wife applies her bites of law to her facts, which are taken from the history of her marriages, and she thereby proves that her definition of the custom of marriage is correct. However, she recounts the stories of her marriages so that her authority over her husbands is proven, as her rule has been cast in such a way that her stories will prove it. Furthermore, the facts presented in the narratives are limited to those that prove her rule. This again is standard practice in legal argumentation.

Whether or not the Wife is found to be "misquoting" or "misusing" Scripture depends upon whether one considers her to be using a dialectical strategy or a rhetorical one. The agonistic form of trial law, by this period fully established, does not compel counselors to give a fair and balanced description of the other side's position; in fact, procedure compels them to do the opposite. The lawyer is compelled to discredit the other side's case in order to build his own. Lawyers, like all rhetoricians, must play to an audience, and cannot follow the motive of fair play. As J. A. Alford states: "To achieve 'the maistre', to manipulate other people into believing or behaving according to one's own wishes is 'what orators most desire'" ("The Wife" 124).

The Wife is masterful at turning her husbands' (the opposition's) words against them. One instance is found in her description of how she argued with her "olde housbondes" that "Oon of us two moste bowen, douteleess,/ And sith a man is moore resonable/ Than womman is, ye moste been suffrable (III.440-442). The Wife turns a rule which comes from man's domination of written language (i.e. that man is more reasonable than woman) against her husbands through a twist of oral argumentation. Written language loses its privilege in the Wife's use of it. She demonstrates the privilege and authority of the oral over the written throughout her Prologue by showing how treacherous textual "bites" can be in the mouth of a skilled orator.

"The language of accusation" most directly appears in the Prologue in the long section containing the "Thou seist" passages. At the conclusion of this section the Wife explains, as if in summary, "Under that colour hadde I many a myrthe" (III.399). While "colour" contains the general meaning of "a specious reason or argument," "a

pretext" (M.E.D. V.2.395-398), it also refers to a procedure invented in the fourteenth century.⁴ This practice is embodied in another Middle English denotation of the term: "a reason or argument advanced by way of justifying, explaining, or excusing an action; grounds for an action" (M.E.D. V.2.395-398). D.W. Sutherland explains the practice of "pleading colour":

It is odd that the defendant should have to describe not only his own claim but also the plaintiff's But this description of the plaintiff's claim by the defendant was the specific element of "color," and the law insisted that the defendant include it if he wanted any discussion of the parties' rights in court before the case went to a jury. And if this seems strange, it is surely much stranger that what the defendant said about the plaintiff's claim was not true and not expected to be true, but pure sham, pure fiction. (184)

Sutherland claims that colour was "a product of the early fourteenth century" that became the rule by the end of the century (186). Due to the formalistic nature of the rules of pleading, it became necessary to ascribe false claims to one's legal opponents in order to facilitate judgement and mediation of a case. These allegations were inserted into the suits to create a stronger claim, and thus get the case into the courtroom.

The "Thou seist" passages in the Prologue are clearly instances of pleading colour, for not only does the Wife specifically refer to her argumentative strategy as "colour," she concludes this section of the poem by saying:

Lordynges, right thus, as ye have understonde,
Baar I stifly myne olde housbondes on honde
That thus they seyden in hir dronkenesse;
And al was fals, but that I took witnesse
On Janekyn, and on my nece also. (III.379-383)

In this passage the Wife openly admits that she ascribed false arguments to her husbands, and invented fictional claims to use against them. It seems that in the Wife's use of "colour" there is a reference to a developing legal practice, one whose ironies and, perhaps we could say, moral subversiveness, Chaucer, the magistrate, could not have failed to notice.

The inconsistency of "pleading colour" stems from the agonistic nature of bureaucratic procedures. The battles of words and the Wife's actual physical battle with her fifth husband described in the Prologue point to the nature of legal procedure: fairness is supposedly imposed by a strict set of rules, and yet fairness never extends to fairness to one's opponent. In trial by battle, which is what an oral trial still essentially remains, the necessity is winning. The two sides do not co-operate to discover the truth, nor to agree upon an outcome that is just; they are merely concerned with convincing the judge and jurors of their own particular interpretation of the law, the facts, and the way the one should be applied to the other. The lawyer's rhetoric is inevitably to some degree false, as he or she cannot admit to the possibility of a client's guilt, nor to the truth of the other side's argument.

John Manly has pointed out how highly rhetorical the Wife of Bath's Prologue and Tale are.⁵ In Alford's view, the rhetorical Wife is the philosophical Clerk's direct counterpart; he claims that the conflict between the Wife and the Clerk "is rooted in the recurrent tension between two modes of discourse, rhetorical and philosophical" ("The Wife" 109). We see in this opposition a tension between the oral tradition of rhetoric and the written tradition of philosophy. Although Alford does not discuss the

oral/written dichotomy, the Wife obviously aligns herself throughout the Prologue with the oral tradition of rhetoric, in order to use it against the written one of philosophy.

In Platonic thought the opposition between rhetoric and logic/dialectic is essentially a moral one. As Alford explains:

In contrast to dialectic, whose object is truth, rhetoric is morally indifferent. Its only guide is self-interest. Its practitioners may side with the true but they may just as easily side with the false--to deceive, to have the guilty judged innocent, to make the worse cause seem the better Their object, in a word, is not truth but power. ("The Wife" 110)

We can see from the example Alford uses to make his point the obvious connection between rhetoric and the legal profession, and by an extension which Alford does not make, between the Wife of Bath and the lawyer. The objections to, and anxiety caused by, the legal profession seem to be related to its professional practice of undermining what Douglas Canfield has termed "the chivalric code of the word as bond."

It is the rhetorical performance of the lawyer which poses a threat to the "word as bond." Jody Enders explains:

According to rhetorical theory and practice, law had always been a kind of microcosmic drama that was "staged" at the time of delivery. Ever since Plato, the lawmaker was thought to be engaged in a theatrical enterprise Eventually, however, forensic delivery became so theatrical that law was more than similar to drama . . . it was a protodrama characterized by conflict, spectacle, impersonation, staging, costume, and audience participation. (19-20)

We can only conjecture the dramatic flair with which the Wife would have delivered the rhetorical tour de force of her Prologue. Perhaps in her oral performance we can see Hélène Cixous' image of the speaking female: "She doesn't 'speak,' she throws her trembling body forward; she lets go of herself, she flies; all of her passes into her

voice, and it's with her body that she vitally supports the "logic" of her speech" (881). The dramatic rhetoric of the Wife makes her a dangerous opponent. While Canfield claims that it is with "her tongue" that the Wife of Bath "subverts not only Scripture, . . . but the entire Code" (122), the truly feminine rhetorician, in Cixous' conception, "physically materializes what she's thinking; she signifies it with her body" (881). Like the theatricality of forensic delivery, the Wife's "performance" collapses the border between "masculine" and "feminine" modes of discourse.

Essentially, for the medievals as for the ancient Greeks, the lawyer is aligned with rhetorical and dramatic speech, not with written language. It is what lawyers orally do to texts which causes suspicion and anxiety, just as what the Wife of Bath does to texts in her narrative arouses suspicions about, and objections to, her. The Wife wields rhetorical power over the written word which lies "buried" in her argument just as the case records do in their heaps of parchment scrolls. It is not easy to "search the record" in the Wife's case either; one must have considerable memory of Scripture to be able to recall extemporaneously the "buried" halves of her Scriptural quotations.

In her somewhat illogical and deceptive formulation of a case the Wife of Bath may embody a covert representation of cultural anxiety about legal procedures. The rhetorical practices of the legal profession may have led to its extreme unpopularity, as what lawyers orally did to a frequently "buried" case record allowed them to abuse their powers. It may not have been their function as writers of documents that caused lawyers to be targeted by the peasants, but their role as speakers about "hidden" documents. It is "hidden writing" and those who have control and mastery over it

which poses the greatest threat to the "word as bond," and to the fair trial of a case in the courtroom.

By her appropriation of the lawyer's rhetoric the Wife poses a serious threat to the "code." Michael Clanchy has noted that the increased dependance upon litigation and the increasing sophistication of legal procedures toward the end of the medieval period had the effect of "weakening and straining the bonds of affection in feudal lordship" ("Law and Love" 62). The courtroom undermined the code of the oral oath as much as any other force at work to bring about the demise of feudal society. As a "mock lawyer" the Wife is more dangerous to the code than she is as a "resistant woman" (to use Thomas Hahn's label for her). In the face of a growing bureaucracy, the personal, feudal ties of the oral oath were fast disappearing. The agonistic approach of trial procedure was antithetical to the idea of personal allegiance contained in feudal bonds.

The bureaucratic system in place by the fourteenth century was devoid of the personal attention of the king as arbitrator, and bargaining was increasingly replaced by hostile litigation. Clanchy explains:

Henry II devised an automated system of justice emphasizing speed and decisiveness. The plaintiff obtained a writ in standardized form . . . instructing a jury to be summoned, the jury gave a verdict of 'Yes' or 'No,' and judgement and execution then followed. The system stopped people rambling on about their grievances by compelling them to confine their statements within prescribed forms . . . Like Frederick II's system, the common law penalized people for making agreements. To compromise with the defendant was to insult the king, whose aid had been given to the plaintiff to prosecute a wrongdoer . . . Henry II's automated system of law made it easier--and more necessary--for neighbors to sue each other in the king's court. ("Law and Love" 62)

In Clanchy's assessment the standardized nature of bureaucratic procedure led to increasing agonism. The bureaucratic system disintegrated feudal ties and replaced them with increasingly necessary disputes ("Law and Love" passim).

Carolyn Dinshaw has said, "the Wife is everything the Man of Law can't say" (115). She argues that the Wife is exposing the techniques of the "clerkly glossatores," "exposing techniques that they would rather keep invisible" (120). Yet, it seems that the Wife's rhetorical techniques go far beyond mere glossing. She is herself a product of uncertainty; her contradictions and agonism are an embodied depiction of the new bureaucratic system itself. As Dame Counselor, the Wife represents the disputational spirit and contorted logic of the new bureaucratic order of society.

From an historical perspective there are a number of significant factors underlying the Wife's appropriation of legal rhetoric and her attitude towards texts and documents. She uses texts in a manipulative fashion and also attacks them, tearing "thre leves" (III.790) out of one text and causing another to be tossed in the fire (III.816). The dependence of the bureaucracy upon documents obviously caused widespread concern about their proper use and function, and about the nature of what constitutes a "valid" legal document. Clanchy notes of the thirteenth century that "documents did not immediately inspire trust" (From Memory 294). Furthermore, the forgery of legal documents was rampant in the early Middle Ages, so that many titles and privileges rested upon the tenuous foundations of forged charters. Even one of the later Year Books is considered to be a forgery (Plucknett, Studies 337).

Clanchy has demonstrated that "lay literacy grew out of bureaucracy" (From Memory 19) and in this sense literacy and bureaucracy worked together to block the peasants and commons from obtaining the mediating function of their king as feudal lord. If the commons were opposed to literacy it was in this context that it appeared most hostile to their customary rights: law now equalled bureaucracy. Feudal law was personal and based upon oral oaths which required no intermediaries; but, the new "automated system of justice" was embodied by a complex bureaucratic system. Justice was turning into the modern definition of "law": "everything to do with the administration of justice in a society, such as the law or laws, the lawyers, the judges, and every system, office, and functionary concerned with the enactment, application, determination, and enforcement of the laws" (Gale 6).

Bruce Lyon explains:

the last two centuries of medieval England witnessed the elaboration of the machinery of process and of the rules of pleadings and a refinement of legal principles previously established. No longer was the law dominated and molded by legislation but by a skilled, learned, proud, and jealous legal profession. (613)

While in the late 1300s, king and parliament are battling for control of the law, the war is about to be won by the legal profession. This profession was instrumental in bringing about the ascendancy of a bureaucratic system over a feudal one. The lawyers' powers lay in the indeterminacy of the unwritten rules and customs which controlled the application and interpretation of the written laws. In the fourteenth century, the lawyers' power lay also in the occulted nature of the buried case record.

The Wife's argument in the Prologue is ostensibly about the authority of the wife over the husband in marriage; however, her "buried" case is about the legal authority of the lex non scripta over the lex scripta. This aspect of the Prologue reflects the social tensions in the background of the literary performance. There is, in fact, a battle going on outside the poem for control of the law, a battle which will be won by "a skilled, learned, proud, and jealous legal profession" (Lyon 613) with which the Wife is subtly aligned through her appropriation of legal rhetoric. There is also a "buried" accusation against the misuse of documents by those in power, including both king and parliament. The Wife covertly exposes the contorted logic by which the courts are making their rulings, bringing up the question of who is ruling whom, or what is being ruled by what. Is law ruling or is rhetoric? And what form of law has precedence, if law indeed is ruling--the written or the unwritten?

The authority of the lex non scripta over the lex scripta forms not only a backdrop to the Wife's Prologue, it is her Prologue. The Wife's fifth husband reads her a case history of wicked wives, and she quites him by tearing "thre leves" (III.790) out of the book and making him "brenne his book" (III.816), an action which echoes the defiant peasant Margery Starre crying, "Away with the learning of clerks, away with it!" (McKisack 417) However, unlike the rebel peasant, the Wife of Bath asks not for a new lex scripta, but formulates a lex non scripta. Her "law" of marriage is embodied in an oral argument which quites the written word. She proves through wily argumentation that wives were given authority over their husbands, and that she had authority over her own, setting thereby a customary precedent. Doubtless, her

argumentation throughout makes the foot fit the shoe; however, the practitioners of this type of rhetoric are now a powerful force in fourteenth century society. Furthermore, the Wife's Prologue leads to a tale about a legal case, its sentencing, and the commuting of that sentence, giving further justification for the legal undertones of the Prologue.

Chaucer aligns the Wife of Bath with the practitioners of a form of oral argumentation that uses a particular form of logic and rule application. In the tension between lex scripta and lex non scripta, the Wife is on the side of the unwritten law. The Wife assumes the power of oral interpretation over the written texts of Paul, and sets forth a "cas" which is written down in Chaucer's record as a precedent for future readers to follow. There is buried in her Prologue an alignment between the hatred toward lawyers (and their power of interpretation) demonstrated by the peasants' attack upon them, and the hatred toward women (whose rhetoric is necessarily oral) in written texts of the period. The Wife is aligned in her Prologue with interpretation, the unwritten law, legal rhetoric, and most significantly, with the mediation between the written and the unwritten.

The Wife of Bath reinforces rule by law (a written/oral negotiation) rather than by oath and sovereignty. She is aligned with the new order of things which will not be bound by the sovereignty of the king, but takes the power of interpretation and negotiation unto itself. Neither written law nor sovereign oath rule; what now rules is the professional, bureaucratic negotiation between lex scripta and lex non scripta. The "buried" legal case of the Wife's Prologue is that those who are professionally

assuming the power of legal interpretation are an emerging political force destined to become "the supreme master, above both king and parliament" (Lyon 625).

ENDNOTES

¹Quotations from The Canterbury Tales are taken from Larry D. Benson, ed., The Riverside Chaucer, and will be cited as line references within the text.

²Evidence of the inaccessibility of the plea rolls can be surmised from the fact that only a very eminent judge such as Bracton seems to have had access to any substantial number of them for use in compiling a legal textbook. Hogue explains that: "Bracton's use of the plea rolls was extraordinary. Other justices may not have been able to secure custody of royal plea rolls for the purpose of compiling anything comparable to Bracton's Note Book, which consisted of about two thousand cases selected to illustrate the law at its best. The author of Fleta, writing about forty years after Bracton, refers to one case; Britton, who wrote an epitome of Bracton soon after 1290, refers to none; Littleton in his authoritative work on Tenures (ca. 1481?) refers to eleven cases" (189).

³G. O. Sayles estimates that there were only three or four practicing at any one time (Select Cases xxx).

⁴Although "colour" only comes into the common law in the fourteenth century, it is clearly similar to the use of fictio in Roman jurisprudence. As Maine explains: "Fictio, in old Roman Law, is properly a term of pleading, and signifies a false averment on the part of the plaintiff which the defendant was not allowed to traverse; such, for example, as an averment that the plaintiff was a Roman citizen when in truth he was a foreigner. The object of these "fictiones" was, of course, to give jurisdiction" (24-5).

⁵John Manly in "Chaucer and the Rhetoricians" claims that about fifty percent of the content of the Wife of Bath's Prologue and Tale consists of rhetorical devices, with only the Monk's Tale and the Manciple's Tale showing a higher incidence.

CHAPTER TWO

The Legal Implications of the General Prologue's Portrait of the Sergeant of the Law

Derek Pearsall writes: "In The Canterbury Tales generally, vows and promises are made to be broken, once the exchange rate has changed" (The Life 248). These words take on an interesting resonance with regard to the portrait of the Sergeant of the Law in the General Prologue. In lines that have drawn much critical discussion, the narrator says of the Sergeant: "So greet a purchasour was nowhere noon:/ Al was fee symple to him in effect;/ His purchasyng myghte nat been infect" (I.318-20). R.F. Green has noted the reference made in these lines to a legal procedure for removing entailments (usually the claims of heirs) from property ownership. For this strategy Green uses the label "collusive recovery." Green's insight into this issue offers a new perspective on the Sergeant which I will use to clarify some unresolved questions about the meaning and implications of the legal terminology Chaucer uses in this portrait.

Edwin A. Greenlaw notes of the contrast between "purchas" and "rent" in the portrait of the Friar that, "rent" "always had the sense of legal income, as contrasted with 'purchas,' which generally connotes practices of doubtful propriety" (144). Paull F. Baum agrees that in the Friar's portrait, "purchas stands for illegal gains and rente for legal income"; however, he holds that in the Sergeant's portrait, which occurs a few lines after the Friar's:

purchasour, purchasyng have the other and more modern meaning, not however without the sinister implication. The Man of Law was very successful in negotiating purchases, and always to his own advantage; his

purchases could not be infect, i.e., they could not be proved to be other than legal. (242-3)

There must be something sinister about the method the Sergeant uses in negotiating purchases, for, I will argue, in the fourteenth century all land was not held in "fee symple." In order for "Al" to be "fee symple to him in effect" (I.319) the Sergeant must be practicing a means of disentailing properties. The conveyancing practice called "collusive recovery" may have led to the sinister meaning of "purchas"; for, to purchase land in the fourteenth century was frequently "to contrive, plot," (M.E.D. P.8.1467) and in the end, to "appropriate (land) to one's use without legal title" (M.E.D. P.8.1466).

The word "purchas" also expresses medieval Christian resistance to the economic freedom of the individual. P.S. Atiyah explains that in the medieval societies of Western Europe:

economic ideas and ethical ideas were closely related the element of freedom was severely constrained by ethical ideas. Men were not, nor were they thought to be, free to do what they chose. Even their own property--as it came to be thought of in the seventeenth and eighteenth centuries--did not 'belong' to them. Land, the most important source of property, was not owned, but 'held' And if a man did not own his property to do what he chose with it, neither did he own his person absolutely. Medieval man was involved, whether he liked it or not, in an intricate network of relationships with his fellow men. (Freedom of Contract 61-2)

In regard to contractual relationships, the medievals held that, "Justice was more important than freedom of choice" (Atiyah, Freedom of Contract 62). By introducing freedom of choice into land law, and altering the "network of relationships" involved in traditional land tenure, the movement to free land up for inclusion in a commodity

market led to profound changes in the social structure. By making freedom of choice more important than justice, land law broke down the customary ties between men and the land, and among men. This social and legal shift, with roots in land conveyancing practice, must have been greeted with apprehension and unease by those with an understanding of what was going on. It appears from the portrait of the Sergeant that Chaucer had an insider's knowledge of the workings of the legal system, and the professional appointments he held would attest to this.

The concept of the free alienability of land was a fairly recent phenomenon in the fourteenth century. In the thirteenth century even a tenant in fee simple (the most unrestricted form of ownership) could not freely alienate his land. Medieval restrictions upon the alienation of property were the result of both the imposition of feudalism (after the reign of Henry II) and ancient English customs which predated feudal ideas. The customs which originally restricted alienation were based on the belief that a tenant had no right to sell the inheritance of his family. Anglo-Saxon custom held that the sale of land cheated future heirs, as well as ancestors, out of what rightfully belonged to them. Land did not "belong to" the fleeting current owner, but was "held by" him. After the reign of Henry II, restrictions upon alienation were based primarily on the belief that the tenant had no right to transfer the obligations he owed to his immediate lord to another tenant, as the relationship between lord and tenant was based on a personal covenant. Feudal ideology maintained that alienation broke the bond of fealty with the lord. Thus, in both customary and feudal systems of thought, there were ethical objections to the freedom to alienate real property. Nevertheless, land was being

alienated in Chaucer's time, and even much earlier, by means which undermined this ideology about landholding as well as more recent legislation regarding alienation.

K.E. Digby explains:

a practice prevailed as early as the reign of Henry II of conveyancing lands by means of a fictitious or collusive suit, commenced by arrangement by the intended alienee against the alienor, and then compromised with permission of the court by the defendant making his peace with the claimant and abandoning his defence. (Real Property 105-6)

Digby places this practice under the rubric of "the doctrine of fines," which he claims "was formally one of the most intricate branches of the law of real property" (Real Property 106). The "doctrine of fines" (which will be referred to hereafter as the "collusive recovery") was abolished in 1834 by the Act for the Abolition of Fines and Recoveries (3 and 4 Will. IV, c.74); however, by this time free alienation of property had become such an accepted doctrine that the abolition of the practice was redundant. The power of "collusive recovery" was that it made the doctrine of free alienability seem to be a sanctioned and acceptable practice, even though it was proscribed by both custom and legislation. Collusive recovery gave the appearance of legitimacy to the practice of selling land which had been given under the condition that it was not to be sold. The influence of the collusive recovery is significant enough for it to deserve more attention in the history of the common law than it has hitherto received.

The fact that the oath of the fictitious suit "was compromised with permission of the court" is an aspect of the doctrines of fines which may have inspired Chaucer's allusion to the practice. This was a situation in which the courts of law were undermining the value of both oaths and written laws. This chapter argues that

Chaucer's portrait of the Sergeant points to the key culprits behind this compromising situation: the Order of Sergeants, who had a subversive relationship to both oral and written forms of law. The lex scripta, I argue, is undermined in the area of land conveyancing through customs established in the courts (i.e. the lex non scripta); and, in this area of the law, the courts were controlled by the Sergeants. In "collusive recovery" we see a specific example of the lex non scripta "overwriting" the lex scripta, the written Statutes created by King and Parliament.

In order to alienate or sell land a seller has to have an unencumbered ownership of it, one that gives the right to alienate the property from one's heirs and/or the heirs of the original donor. Unencumbered ownership of property is referred to as holding in "fee simple." A great deal of land in the Middle Ages was held in "fee tail," and thus could not be alienated. The proliferation of "fee tail" estates generally resulted from the problems created by male primogeniture. This system of inheritance (in which all real property goes to the eldest son) was not completely workable due to "the almost inescapable duty of fathers to make some sort of provision for their daughters and younger sons" (Miller 119). Commonly, a conditional gift of land was given to these family members; this gift did not give them the freedom to sell the land (and thus permanently break up the family holding) for three or four generations. In the interval, any failure of heirs (often of a particular type stipulated by the will) meant that the property would revert to the donor and/or his heirs (Miller 119). Daughters and younger sons were apparently unhappy about this restriction on their ownership, and in the thirteenth century "the common law courts apparently showed some sympathy for

their endeavours to turn these imperfect gifts at the earliest possible moment into holdings over which they had free disposition" (Miller 119).

The method by which entailments were escaped from eventually became a legally sanctioned procedure referred to as the "common recovery." J.H. Baker explains the origins of it:

The basis of the family settlement was still, and would always remain, the entail. Bedevilled as early as Henry VII's time by an accretion of abstruse erudition, the entail in practice represented a compromise between the interests of the living and the dead: landowners wanted maximum freedom for themselves with which to limit the freedom of their descendants. The balance between these irreconcilable freedoms was ever shifting, but well before 1500 the demand for freedom of alienation had achieved a substantial victory over vanity and ancestral pride, through the use of the fine and the feigned or "common" recovery. (II.204)

A.W.B. Simpson has noted that an air of mystery surrounds the practice of common recovery. He relates, "in the first place we do not really know when it was evolved, and in the second place there is no real understanding of the theoretical justification which allowed its entrance into the law" (Land Law 130). Similarly, T.F.T. Plucknett has noted that "if the theory of the recovery is obscure, its history is even more so" (Concise History 621).

The first clear indication in the records of the acceptance of the device which came to be known as the common recovery appears in Taltarum's Case in 1472;¹ however, there is evidence that the procedure had already been in use for some time, as Edward I's Second Statute of Westminster attempted to make it more difficult for people to alienate property held in fee tail. Chapter one of the Statute "concerning

lands that are many times given upon condition" is generally referred to as De Donis.²

R.F. Green explains the Statute's intent:

There is no doubt that many tenants in fee tail in the middle ages, as later, were dissatisfied with their lot, and that a great deal of legal ingenuity went into helping them circumvent the wishes of their ancestors. De Donis . . . offered those who had been disadvantaged by the breaking of an entail a legal remedy (known as a writ of formedon) which made the buying or selling of entailed estates a very much more risky business. (304)

The conveyancing of property became a "risky business" after the passing of De Donis because when property was sold, the seller had to warrant that it was free of any possible claim. If, after the sale, a claim was made, the buyer could summon the seller (in a process called "vouching to warranty") to answer the claim (thus making the seller replace the buyer's role as defendant). If the original seller won, the buyer remained in possession. But, if he lost, the land went to the new claimant and the buyer would expect compensation. Thus, both buyer and seller were put at risk if any claims were made after the sale was transacted.

This same procedure of "vouching to warranty" was used deceptively in the "collusive recovery" to get around entailments (allowing people to do precisely what the Statute meant to prevent them from doing). R.F. Green offers the most detailed explanation of how the "switch" in the process of "vouching to warranty" was done.

He writes:

a tenant in fee tail would privately agree to a price with a purchaser who would then sue him for ownership; thereupon, the tenant would vouch to warranty a third party whose interest in the estate was purely fictional, and who after acknowledging this obligation in court would request an adjournment and disappear from view. The purchaser would thus win the case against the vouchee by default and take formal

possession of the estate. The advantage of this process for both purchaser and vendor was that any legitimate heirs disinherited by the transaction were left without legal grounds for complaint against either of them. Only the vouchee, as loser of the case, was liable, and in theory he was obliged to provide such heirs with an estate of equal value to the one they had lost. Since, however, the vouchee was a straw man, deliberately chosen because, as Plucknett puts it, he had "carefully refrained from land ownership" the heirs were effectively left without any legal remedy. (304)

A.W.B Simpson has commented on the questionable ethics involved in this procedure. He notes that, "the court's view is that it has done its best, and cannot be blamed if Brown [the vouchee] is a man of straw . . . a blind eye is turned to the fact that the whole procedure is an obvious fraud, and neither the issue nor the remaindermen are allowed to do anything about it" (Land Law 130). Why this situation was tacitly sanctioned by the courts has not been adequately explained by legal historians. The procedure involves a subversive use of the oral oath; furthermore, it turns oath-making itself into a commodity, as the "third party" was likely compensated for his efforts. The tacit approval of this fiction leads one to question what the "value" of an oral oath was in the fourteenth-century courtroom.

The "common recovery" became an officially sanctioned conveyancing practice by the end of the fifteenth century. From this, R.F. Green proposes that, "collusive recovery (that is, an under-the-counter version of the same thing) probably goes back much further" (304). He points to a case in the Year Book of 1340 as evidence of earlier use of the procedure.³ On the dating of the use of this procedure H.W. Elphinstone explains:

it is often said that common recoveries were first made use of after the decision in Taltarum's case If it were allowable to make a guess

on a matter of such historical importance, I should surmise that Taltarum's case renders it probable that recoveries with single voucher were already in use. (287)

Glanvill's work demonstrates that the practice of conveying lands by means of a fictitious or collusive suit was in use as early as the reign of Henry II (Book viii, ch.1,2).

Blackstone holds that "common recoveries were invented by the ecclesiastics to elude the statutes of mortmain" (II.357), and Glanvill (Book vii, ch.2) provides evidence for this conclusion. As corporations, religious houses purchased land in mortmain (i.e. in mortua manu), and this required "a licence of mortmain from the crown . . . for as the king is the ultimate lord of every fee, he ought not, unless by his own consent, to lose his privilege of escheats and other feudal profits, by the vesting of lands in tenants that can never be attainted or die" (Blackstone II.269). The custom of requiring licences of mortmain goes back to Saxon times. Blackstone dates the custom "above fifty years before the Norman conquest" (II.269). The necessity of the licence was acknowledged by the Constitutions of Clarendon (A.D.1164); however, as Blackstone claims:

such were the influence and ingenuity of the clergy that (notwithstanding the fundamental principle) we find that the largest and most considerable dotations [i.e. endowments] of religious houses happened within less than two centuries after the conquest. And (when a licence could not be obtained) their contrivance seems to have been this: that, as the forfeiture for such alienations accrued in the first place to the immediate lord of the fee, the tenant who meant to alienate first conveyed his lands to the religious house, and instantly took them back again, to hold as tenant to the monestary; which kind of instantaneous seisin was probably held not to occasion any forfeiture: and then, by pretext of some other forfeiture, surrender, or escheat, the society entered into those lands in

right of such their newly acquired signiory, as immediate lords of the fee. (II.269)

The second of Henry III's great charters (A.D.1217, cap 43) attempted to put an end to this practice. However, as Blackstone notes, "the aggregate ecclesiastical bodies (who, Sir Edward Coke observes, in this were to be commended, that they ever had of their counsel the best learned men that they could get) found many means to creep out of this statute" (II.270). Of the later statutes which tried to prevent ecclesiastics from acquiring property in mortmain without licence, Blackstone comments:

Yet still it was found difficult to set bounds to ecclesiastical ingenuity: for when they were driven out of all their former holds, they devised a new method of conveyance, by which the lands were granted, not to themselves directly, but to nominal feoffees to the use of the religious houses. (II.271-2)

According to Blackstone, religious houses and their legal counsel devised strategies to escape bars on free alienation and on corporate ownership of property in order to allow the religious houses to acquire freely properties by donation. Corporate ownership (mortmain) was also advantageous, if it could be obtained, for it eluded feudal fees, duties, and possible seizure, as the corporation held "in a dead hand" which could not be held accountable for the feudal obligations which involved personal performance.⁴

"Collusive recovery" became an essential element in the movement away from both the customary Anglo-Saxon and the feudal systems of land ownership and their "networks of obligations." The free alienation of property dissolved these obligations, and the "traffic in land" ultimately dissolved the traditional land-holding structures. Through the use of collusive recoveries land came to be treated as "property" to be freely exchanged. The concept of land as commodity seems to be related to the idea

of the oath itself as a commodity item which can be bought or sold in or outside the courtroom. "Vouching to warranty," that is, swearing a legally binding oath, becomes in the "collusive recovery" a commodity exchange tool. It seems significant that the oath (which tied feudal and pre-feudal society together) was used subversively in a procedure whose usefulness was to turn land from a feudal and ancestral "holding" into a market "commodity."

Pearsall has summarized that during Chaucer's lifetime, "the unwritten allegiances of feudal society were being written as indentures . . . and the fixed hierarchies of the past, based on land-tenure and service, were giving way to 'a complex network of marketable privileges and duties'" (The Life 248). Once land moves into the marketplace, the meaning of ownership changes. That this change was expedited by a legally subversive strategy, one almost certainly perpetuated by the Order of Sergeants, gives a darker tone to the General Prologue's portrait of the Sergeant than is generally seen. The veiled accusation against the Sergeant in the portrait runs deeper into the political framework of fourteenth century England than is suggested by viewing the portrait merely as an attack upon a particular Sergeant who was a personal enemy of the author.⁵ We also begin to see how "purchas" can mean two things at the same time: both the legal and illegal acquisition of property. Legal and illegal means were essentially the same, as collusive recoveries can be seen as a sanctioned fraud which cheated rightful heirs out of their prospects, and in some cases the lord out of his rightful due. How one felt about the process used in "recoveries" depended upon whether one was profitting by it, or losing out. The "collusive

recovery" explains why in Middle English "purchas" can mean to contrive and plot as well as to buy.

There is a strong suggestion, one could even say a blatant accusation, in the General Prologue that the Sergeant is a master of the collusive recovery. If "Al was fee symple to him in effect," (I.319) the Sergeant had to have been conveyancing land through "collusive recovery" actions. The Order of Sergeants was very actively involved in land law and conveyancing in the fourteenth century. It is irrelevant to debate whether the Sergeant is purchasing land for himself or for his clients (c.f. F.M. Manly and Jill Mann), as land conveyancing formed a substantial part of medieval legal practice, and conveyancing by this time was closely connected with the Order of Sergeants. Furthermore, wealthy lawyers were often acquisitive purchasers of land. Thus, the Sergeant undoubtedly would have both personal and professional interests in the performance of real estate transactions.

Interpretations of the Sergeant's portrait sometimes fail to take the details of fourteenth-century legal history into account. For instance, a lawyer who attempts to clarify the issues addressed in the Sergeant's portrait fails to consider the changes which have occurred over the course of the last six hundred years, and assumes that Chaucer's legal system is the same as England's current one. H. Munro relates:

While there is no reason to dissent from the generally held opinion that Chaucer was attacking the Serjeant, it is not obvious that there was anything to attack in buying land, nor is it clear what would be meant by the suggestion that somehow or other the Serjeant could turn inferior titles into freehold. This is an exercise as difficult today as it must have been in Chaucer's epoch. Further, it is hard to believe that Serjeants with busy court practices ever did conveyancing. Probably their situation was similar in that respect to that of a modern Q.C. (1189)

Contrary to Munro's opinion, 1) there were things "to attack in the buying of land," 2) "inferior titles" could be turned into freehold; and, furthermore, 3) the Sergeants not only did land conveyancing, they had an exclusive right to appear as counsel in all real estate actions.

In the course of the fourteenth century a rule was established that only Sergeants could become judges. Furthermore, Sergeants became officers of the Court of Common Pleas, and had exclusive right of audience there (Plucknett, Studies 334). The Court of Common Pleas' jurisdiction covered "the real actions and the actions of debt, detinue and covenant" (Potter 62). "Real actions" involved suits which were "the most lucrative and most important since they were related to real property" (Holdsworth I, 198). Even though the actions of debt, detinue and covenant became obsolete and eventually moved to other courts whose procedures were more advantageous, real actions remained throughout the Middle Ages the exclusive jurisdiction of the Court of Common Pleas (Potter 62). Thus, it turned out that members of the Order of Sergeants were exclusively privileged to appear as counsel and sit on the bench for all land conveyancing actions. Therefore, the only group of lawyers who, ostensibly, could have been involved in "collusive recoveries" during the later fourteenth century were the Sergeants.⁶

Although I would give the quote a more ironic cast than I suspect McKenna intends, I agree with her paraphrase of the three lines in question from the Sergeant's portrait. She writes:

The Serjeant has knowledge and a high reputation which have brought him many fees and robes. He is expert in handling problems of land

ownership, a talent then particularly admired, since it involved complicated and difficult procedures, especially when a clear title in fee simple was so highly prized. (262)

There is no doubt that "a clear title in fee simple" was "highly prized," as there were few things as potentially lucrative as the sale of land and the titles connected to it.

M.D. Lambkin notes:

During the increasing subinfeudation and the eventual disintegration of the feudal system in the Middle Ages freely alienable land presented opportunities for trafficking in titles, especially by the king's officers and all sorts of legal officials. Repeated statutes from Edward I (statute of 1275) to Henry VIII (statute of 1540) could not prevent these officials from stirring up litigation, maintaining others' suits, and subverting impartial legal processes in order to share in the proceeds of land. (82-3)

It is important to note here that the Sergeants are by this period officers of the King (Plucknett, Studies 334), and thus are implicated by Potter in "trafficking in titles."

Edward Miller has noted of the thirteenth century: "as land began to be looked upon as an investment, traffic in it became keener, and the creation of new wealth brought new classes of men into the investor's market" (121). One particular group known for its eagerness to purchase property holdings was the legal profession. The now notorious Thomas Pynchbek, along with fellow Sergeant Henry Greene, rose from landless, presumably peasant, origins to found "families which would be secure among the landed gentry for generations" (Eliason 523).

As common law judges were, and still are, recruited exclusively from the bar, and in the fourteenth century from "a particular branch of the bar, that is to say, from the serjeants" (Plucknett, Studies 333), the professional interests of the judiciary and the lawyers were essentially the same. The Sergeants were, therefore, doing real estate

conveyancing as counsel, conveyancing as purchasers themselves, and also sitting in judgement on any cases involving "real actions." The all-encompassing involvement of the Sergeants in land transactions gives a completely new cast to the meaning of the word "collusive" in the appellation "collusive recovery."

The fourteenth-century legal system appears all around to have a "collusive" quality about it, with the Order of Sergeants at the very heart of it all. As T.F.T. Plucknett comments: "it rather seems that the serjeants had strong monopolistic instincts" (Studies 334). First of all, the sergeants managed to have all real actions made their exclusive province through the Order's connection with the Court of Common Pleas, thereby cornering the most lucrative and politically important facet of the legal business.⁷ Having somehow established this monopoly, the Sergeants found ways to exploit it by refining the earlier strategies devised by the religious houses to acquire property. The judges did not, of course, object to the subversive nature of the procedures involved, as they were themselves members of the Order. The judiciary in the Court of Common Pleas was unlikely to have opposed practices which were in the best interests of its own elite group. Thus, the collusion in "collusive" recovery is as much between the bench and the bar as it is between the parties involved in the suit. That this under-the-counter procedure came to be sanctioned as a standard conveyancing practice (with actual officers of the court standing in as straw men by the fifteenth century),⁸ demonstrates how powerful the Sergeants were at creating a legal system which worked for their own benefit.

The Year Books in which legal cases were reported were apparently created for the exclusive use of the Order of Sergeants. T.F.T. Plucknett suggests that there is something vaguely suspicious about the Sergeants' control over these legal records. He comments that "disagreeable suspicions may be aroused when a historical source is too intimately connected with a small and close professional group" (Studies 337-338). J.H. Baker notes one particular and important effect of the connection between the Sergeants and the Year Books:

the origin of the common recovery has been regarded as a 'great mystery,' mainly because the year-book cases do not draw a distinction between recoveries and common recoveries. The success of the device lay, of course, in the legal impossibility of making such a distinction: the validity of the recoveror's title could not be impugned by anything on the face of the record. (II.204)

It appears that the records of these cases conceal as much as they reveal about land conveyances. "Collusive recoveries" were effectively buried in the Year Books amongst legitimate recoveries. Thus, a seemingly innocuous and irrelevant fact, that the Sergeants created the Year Books for their own exclusive use, helps to explain how a device which greatly affected land law, and had substantial effects upon the entire social structure, was allowed to continue without comment or opposition, despite its fraudulent nature and its unfairness to the vast number of people cheated out of their right of inheritance.

The excessive insularity of the legal profession led to its virtual autonomy over the creation and dispensation of the Common Law. G.O. Sayles explains:

Before the middle of the fourteenth century the Bench and the Bar had joined themselves together in an intimate and inseparable association. . . No one could become a justice of the central courts of law, that is the

king's bench and the common bench, unless he had previously been a serjeant-at-law. The fact we know: but by what means it became a reality is very much a mystery. The reason seems to be that the legal profession was allowed to look after its own affairs, make its own decisions, exercise its own discipline, and what it did was set down in its own private and domestic records. (xxvii-xxix)

The collusive nature of the legal profession allowed it to operate pretty much as it liked, and gave it a monopoly over the creation of legal procedure. That this power must have incited resentment almost goes without saying. Within medieval England, even the system of legal education benefitted the interests of the profession. The order of apprentices "undertook the heavy burden of legal teaching" at the inns of court (Plucknett, Studies 338). This meant that the profession was not split, as it was on the continent, between academics and practitioners (Plucknett, Studies 339). Opposition to the "practices" of the lawyers was virtually ruled out, as there was no real venue from which direct opposition to their development of procedure could come.

It appears, however, that the common people did occasionally and apparently with some vindictiveness vent their frustration with the legal system upon both lawyers and judges. Allan Harding relates:

the aims which the chroniclers attribute to Wat Tyler [during the Revolt of 1381] are evidence of a general hatred of lawyers as such. According to Walsingham, Tyler wanted a commission from the king 'to behead all lawyers (juridicos), escheators and others who had been trained in the law or dealt in the law by reason of their office' The Anonimale Chronicle takes further the suggestion that the people had their own vision of the proper working of the law: Tyler is said to have put at the head of his demands at Smithfield, that there should be 'no law but the law of Winchester and that henceforward there should be no outlawry in any process of law.' (165-166)

We note that Tyler specifically mentions the commons' opposition to "outlawry in any process of law." Here the people openly state their indignation with the procedures created and perpetuated by the Order of Sergeants.

The increasing formalism and intricacy of procedure in the medieval legal system maintained the lawyers' monopoly and essentially drew a veil over what was going on in the courts. As legal historians have noted, substantive law (the actual point of law in question), is virtually impossible to determine from the court records, as it is deeply buried beneath the complex, formulaic character of the writs and pleadings. Outlawry in the process of law perpetuated itself because it was nearly impossible to determine on the face of the record what precedents (i.e. leges non scriptae) were actually being set down for the courts to follow. The "Collusive recovery" (a fraudulent procedure) became the "common recovery" precisely because it had been established as a precedent for probably well over a hundred years; we recall, however, that on the face of the record collusive recovery did not even exist. The lawyers employed their monopoly over the establishment of procedure to create a "custom" which subverted the lex scripta, the express will of King and Parliament in De Donis, and in the other Statutes forbidding forms of maintenance (i.e. collusion). As the powerful core of the profession, the Order of Sergeants is the most culpable group--only the assent of the judiciary in the higher courts (the Courts of King's Bench and Common Pleas) could have allowed collusive actions to become engrained in the legal system.

Harding notes that it is not certain whether by "the law of Winchester" Tyler meant Edward I's Statute of Winchester or the Domesday Book which "very occasionally is call'd the book of Winchester'" (166). He holds that the former is meant, maintaining that the peasants were referring to the "regulations for policing" laid down in the Statute, not to the "privileged status of villeins on ancient demesne" attributed to Domesday (166). While I fully agree with Harding that Tyler probably meant the Statute, the issue of the Domesday Book raises another, possibly volatile cause of resentment against the legal profession. The series of trials, occurring in 1377, which were based on attempts to establish ancient demesne from the record of the Domesday Book were undertaken on the advice of councillors at great expense to the tenants, despite the flimsy legal value of the concept of ancient demesne (Faith 43-70). Virtually all the cases were lost, even when demesne was actually established from Domesday (Barg 213-37). Thus, it appears that the only ones who profitted from the Great Rumour were the councillors and the bureaucracy, both of whom collected substantial fees from these court cases. The professional ethics of the councillors is questionable, considering the abject failure of this legal challenge.

On the other hand, the Domesday trials were resented by the upper classes as much as they most certainly were, after the fact, by those below. The House of Commons, Mary Eliason writes, "protested that the villeins by the help of the Domesday Book and conniving lawyers were trying to escape the duties and customs of villeinage" (517). Commons complained to the King that:

In many parts of England the villeins and tenants of land in villeinage .
 . . have by the advice, procurement, and maintenance and abetting of

certain persons, for profit taken from the said villeins and tenants, purchased in the King's court exemptions from the Book of Domesday, of the manors and townships wherein they dwell. And by colour of these, and through misunderstanding of them, by the evil interpretation of said counsellors they have withdrawn and are withholding the customs and services due to their lords, holding that they are fully discharged of all manner of services due both from their body and their holdings And to maintain these errors and rebellions they have collected among themselves a great sum of money, to pay their costs and expenses. (Rolls of Parliament 1377, iii, 21, reprinted and translated in D. Hughes 229-30)

It is the councillors themselves who are the most harshly indicted in the above record.

It is claimed that they use "procurement" and "maintenance" (both with collusive legal implications) to "aid and abet" (i.e. collude with) the peasants. The Rolls indict the legal profession, not those who are obviously paying dearly for their services. However, the courts were not at all lenient in their interpretation of the freedoms established by ancient demesne. In this case, the councillors may have gone too far in advocating personal freedom over Justice. It is unlikely, though, that the peasants could have afforded the fees of members of the Order of Sergeants. Thus, the failure of the ancient demesne actions may be due to the fact that the Sergeants (on the bench) wished to keep the apprentices (at the bar) in their place, which was out of the area of real property law.

On the other hand, over and over again historians of land law note how unusually lenient the courts of medieval England were in favouring the free alienability of land (see: Miller). This could be interpreted as a socially sympathetic stance on the courts' part, as it effectively reduced the power of the lords and allowed for social mobility. It is likely, however, that the courts' sympathetic leanings toward free

alienation were largely self-serving. The legal profession wanted land to be freely alienable because this served its own interests, which were, potentially, for its members to: 1) acquire substantial fees, 2) acquire for themselves large tracts of land, 3) make the profession as powerful as the great lords in being able to "grant" property to whom it chose, and 4) make themselves "lords." In terms of the last point, it has been noted that the Sergeant is the most socially prominent member of the Canterbury group. Bolton states: "technically, a serjeant of the law ranked with a knight, but serjeants were so much more select than knights that Chaucer's Sergeant is socially the highest figure among the pilgrims, higher than the Knight or even the Prioress" (403). The Sergeant is probably also the wealthiest member of the entourage (see: Manly). Furthermore, voracious purchasers of large tracts of land were also purchasing the titles connected to them.

There has been a lengthy debate on the appropriateness of The Man of Lawe's Tale to his profession. It is my position that Chaucer occludes any significant discussion of legal or political issues in The Man of Lawe's Prologue and Tale, and this may be the best explanation for why the name of the character changes from a Sergeant of the Law (an exclusive label) to the Man of Law (a rather vague one). Authors who make a case for the legal significance of the Tale tend to base their conclusions on broad generalizations about both the legal profession and fourteenth-century legal procedure.⁹ The conclusion of Arthur Norman seems the most reasonable. He claims that the Tale is not concerned with law and that by themselves neither "rhetoric [n]or rant shows a lawyer at work" (322 n.9). Thomas Lounsbury has surmised that the Man

of Lawe's Tale "is the one instance of absolute incongruity found in this work between the character of the narrator and that of the narrative" (436).

What sort of tale to place in the mouth of the Sergeant may have posed a difficult problem for Chaucer. While the portrait appears to contain a slight directed at Thomas Pynchbek, Chaucer might not have wanted to extend the attack any further. An extended indictment of a member of, or all members of, so small and powerful a group as the Sergeants, was likely to have been problematic. Chaucer could not do to the Sergeant (a label which Bolton and Manly claim referred to about twenty people in Chaucer's lifetime) what he does to the Merchant (a generic label). Therefore, he puts aside the character drawn in the portrait and creates a substitute to stand in his place: the Man of Law, who, as Muriel Bowden comments, "could be any insignificant lawyer" (165). Even then, there is evidence in the Prologue of The Man of Lawe's Tale that Chaucer was uncertain about what tale to give the Man of Law, as he sets up the expectation that he will speak in prose, but gives him verse instead. While the General Prologue portrays the Sergeant as a powerful and somewhat menacing character, this menace is veiled in the Tale. The Tale of Constance is a narrative as morally upright and unimpeachable as the Sergeant and his conveyancing procedures seem to be. Like the Sergeant's conveyances, the story of Constance "myghte not been infect" (I.320).

Perhaps Chaucer felt that the General Prologue's portrait of the Sergeant says enough by itself about the Order of Sergeants. John Gower writes a much more pointed indictment of the Sergeants in the Mirour de l'omme, where he proclaims:

Et puis apres quant l'apprentis
 Un certain temps ara complis,
 Dont au pleder soit sufficient,
 Lors quiert q'il ait la coife assis
 Dessur le chief, et pur son pris
 Le noun voet porter de sergant.
 Mais s'il ad esté pardevant
 En une chose covoitant,
 Des Mill lors serra plus espris;
 Car lors devient si fameillant,
 Ne luy souffist un remenant,
 Aniz tout devour le paiis. (ll.24373-24384)

[And after the apprentice has fulfilled a certain time that is sufficient for pleading, he wishes to have the coif placed upon his head, and for his own honor wishes to bear the name of Sergeant. But if before this time in one thing he is greedy, now he is a thousand times inflamed; for he becomes so ravenous that part is not enough for him, he must devour all the land.]

Gower blatantly accuses the Sergeants of devouring land. Like Chaucer, Gower makes a connection between the Order of Sergeants and the voracious acquisition of property. The implications in the direct accusation of Gower and the somewhat veiled one of Chaucer seem to be tied to abuses of both legal procedure and oral oaths in land conveyancing practices. These procedures have far-reaching implications as they challenge traditional medieval ideas about contract and bargaining. By privileging free choice over the abstract idea of Justice, these land conveyancing practices promote the freedom of the individual, and thus oppose traditional medieval social and economic ideologies. By altering the relationship between men and land to one of "belonging to" rather than "holding for," these practices subvert the ethical basis of medieval economic thought and the Christian bias against the economic and social freedom of the individual (represented by the exchange of money in cash transactions).

The procedure of "collusive recovery" also subverted the ideal of the "oath": the personal bond of agreement which created the crucial network of relationships in feudal and pre-feudal society. By turning the oath into a commodity exchange tool, "collusive recovery" stripped oath-making, and thus the personal bond, of its legal and ethical value. The "recoveries" which led to the free alienation of property were alienating in another sense as well. "Recoveries" led to the free alienation of oaths, as the spoken word, vowed before the court, was alienated from the true will of the speaker, the fictitious third party who alienated his oath for cash.

The political and legal implications of "collusive recoveries" run far deeper than might be supposed, for land law was at the heart of the medieval legal system. The privileges connected with being a landholder were immensely important ones. Thus, it is no wonder that the Order of the Coif managed to make land law its exclusive domain. That the Order was allowed such a powerful freedom in this area of the law is an unusual, and as yet almost unexplored, facet of English legal history. Like the religious houses, whose legal ingenuity was the equal of theirs, the Sergeants had considerable political influence, and thus a certain amount of immunity. From this perspective the three seemingly innocuous lines in the portrait, "So greet a purchasour was nowhere noon:/Al was fee symple to him in effect;/ His purchasyng myghte not been infect" (I.318-20), take on a more ominous and pointed tone than can be surmised without taking the Order's monopolistic role in land conveyancing practices into consideration.

ENDNOTES

¹Year Book 12 Edw. IV Mich., f.14, pl. 16., f.19, pl.25, 13 Edw. IV Mich., f.1, pl.1. Blackstone claims that the reason Taltarum's case was finally allowed to enscribe openly the common recovery into the case record is that, "Edward IV observing (in the disputes between the houses of York and Lancaster) how little effect attainders for treason had on families, whose estates were protected by the sanctuary of entails, gave his countenance to the proceeding" (II.117) The procedure was finally made "law" because Edward felt that estates in fee tail encouraged treason, as they "were not liable to forfeiture, longer than for the tenant's life" (II.116).

²A reprint and translation of the Statute of Westminster II, 13 Edward I, ch.i, can be found in K.E. Digby, An Introduction to the History of the Law of Real Property, 226-230.

³Year Book Rec. Pub. 14 Edw.III, pl.43.

⁴For a full discussion of the laws of mortmain see Sandra Raban, Mortmain Legislation and the English Church: 1279-1500, Cambridge U.P., 1982.

⁵On the punning reference to Thomas Pynchbeck in the portrait of the Sergeant see: F.M. Manly, Some New Light on Chaucer; and W.F. Bolton, "Pinchbeck and the Chaucer Circle in the Law Reports and Records of 11-13 Richard II."

⁶However, as T.F.T. Plucknett notes, "the mysterious order of apprentices" must have done a good portion of the work as, "alone [the Serjeants] could never have conducted the vast amount of business recorded on the rolls of the Court of Common Pleas" (Studies 335). Plucknett summarizes that, "it would be hazardous to say that an apprentice . . . could not address the Court of Common Pleas" (Studies 336).

⁷How or why the exclusive connection of the Serjeants with the Court of Common Pleas came about has not been fully explained or investigated. Plucknett notes that "it must be admitted that the stages in the history of the serjeants can hardly yet be traced in any detail" (Studies 334).

⁸See: J.H. Baker (II, 204-5).

⁹Those who take this position on the Man of Law's Tale include: Walter Scheps, "Chaucer's Man of Law and the Tale of Constance"; Marie P. Hamilton, "The Dramatic Suitability of 'The Man of Law's Tale'"; William E. Browne, "Notes on Chaucer's Astrology"; Edgar C. Knowlton, "Chaucer's Man of Law"; Paul E. Beichner, "Chaucer's Man of Law and Disparitas Cultus"; and, Chauncey Wood, "Chaucer's Man of Law as Interpreter."

CHAPTER THREE

Textual Exhibitionism: The Pardoner's Affirmation of Text Over Context

Of the two lawyerly figures in the Canterbury Tales, one, the Wife of Bath, persuades us to condone her vice, while the other, the Man of Lawe, cloaks his vice. The Pardoner, however, throughout his Prologue and Tale, neither persuades us of the rightness of what he does, nor hides what he does. Ellen Schaubert and Ellen Spolsky note that despite his blatant confessions of vice, the Pardoner "refuses to justify himself to his supposed confidants. His Prologue is almost entirely free of the argument he himself leads us to expect" (255). They conclude that this is because he is "a man too arrogant to argue when common conversational decency requires it" (255). He "sets himself outside of the communicative circle" by both boasting and confiding in his listeners, thereby speaking at cross-purposes. Since "the first [speech act] expects approval and the second mitigated disapproval" (Schaubert and Spolsky 251), the Pardoner succeeds in alienating and confusing his audience.

Entering into the debate over the Pardoner's rhetorical strategy, Carolyn Dinshaw claims that the Pardoner's "documents and bulls, placed conspicuously in his bulging 'male,' present an iconographic substitute for his own lacking masculinity" (164). In her interpretation, the Pardoner's "pardouns," "bulles," and "patente" stand in the place of the Pardoner's apparently absent genitals. Dinshaw notes: "the Pardoner is, after all, a 'geldyng or a mare'; he is identified, that is, in terms of an absence of something" (157). She surmises that "the Pardoner surrounds himself with

objects--relics; sealed documents; even words, regarded as objects--which he substitutes for his own lacking wholeness" (159). Dinshaw argues that the Pardoner's "sense of his own lack informs his social behavior, his interactions with others," and this sense of lack is related to his "view of the nature of language itself," which she sees as "radically fragmentary" (158).

This chapter argues, in contrast to Dinshaw's interpretation, that the alienating arrogance of the Pardoner's conversational strategies is related to what I will term his "textual exhibitionism." The Pardoner exhibits or exposes texts for the same compulsive reasons that sexual exhibitionists expose themselves. While the rolled documents with their dangling seals function as displacements for the Pardoner's sense of masculine lack, the seals also specifically mark them as legally potent pieces of writing.¹ These potent things (the "bulles," a label which can mean both the seals and the documents) take the place of other, possibly less potent, things (such as the Pardoner's genitals). This displacement is highlighted by the juxtaposition in the General Prologue's description of the Pardoner. The description of the placement of the documents, which are "biforn him in his lappe," is immediately followed by the description of the Pardoner's apparent "lack," when the narrator comments, "I trowe he were a geldyng or a mare" (VI.686-91). The sealed "bulles" are directly juxtaposed with statement about the Pardoner's sexual "lack" in order to suggest that the "pardouns" stand in the place of the anxiety about masculine potency on the Pardoner's person. I will argue that this sexual anxiety is connected to an anxiety about the potency of language in documents.

The Pardoner has a conversational immunity because his professional privileges are firmly established by the texts of the "bulles," "pardouns," and "patentes" which he conspicuously displays. These legal documents establish the Pardoner's right to solicit alms in spite of anything he might say about his performance of his duties. In the Pardoner's Prologue and Tale the fictional "oral context" of the Pardoner's performance is juxtaposed with the texts and textual references with which he surrounds himself. In his defiantly anti-rhetorical "oral" performance the Pardoner affirms the power of written texts over oral contexts. His texts are a locus of displacement for his own sense of lack and for medieval anxiety about a potential lack in documents and writing.

Eric Jager explains that for the medievals, "typically speech was associated with nature, life, spirit, and presence, whereas writing was linked with artifice, death, matter and absence" (63-4). The Pardoner's displacement of sexual anxiety about absence onto texts is an attempt to deny or supercede the idea of oral context, which encompasses the sense of "nature, life, spirit," and most importantly, "presence." The focus on displacement between text and context in The Pardoner's Prologue and Tale can be connected to the increasing importance of written documents, a textualization of legally valid agreements, within the common law.

The history of the common law regarding covenant² expresses the increasing actualization of the potency of the written word in contrast to that of the spoken in the medieval legal system. A.W.B. Simpson writes that the medieval common law had a "restrictive attitude to parole agreements" (Law of Contract 599). He explains:

In the developed common law the writ [of covenant] could only be used by a plaintiff who could produce a sealed instrument (a "specialty") to witness the covenant; failure to produce ("make proferet") the specialty had the consequence that the action failed in limine. In the thirteenth and early fourteenth centuries this rule was not clearly settled; indeed as late as 1346 there must have been some doubt on the point. This suggests that originally the action lay on mere parole covenants, and that a new and restrictive rule was introduced into the law in Edward I's reign, or thereabouts. But I doubt if this would be a justifiable interpretation, for there never seems to have been a time when the royal courts regularly allowed actions to be taken on parole covenants; indeed there is a case in the Curia Regis Rolls as early as 1234 where it seems that an action of covenant failed because the plaintiff had no charter or chrygraph. (Law of Contract 10-11)

By the fourteenth century the interiorized word (that of the mutual, spoken oath) had virtually lost its power to affect a binding agreement between parties. While originally the written deed was regarded as mere evidence of an agreement, and the act of producing it a 'proof,' a document eventually became the only legally actionable form of agreement (Simpson, Law of Contract 15). This meant that the document came to be seen as the agreement itself.

In earlier Anglo-Saxon and Germanic law the opposite view had been held: a document merely witnessed an oral agreement. The example of wills can be used to illustrate how the idea of contract became "textualized." A.W.B. Simpson explains:

Today a properly executed and witnessed will is a clear example of a dispositive instrument, and the way in which we view the matter is clearly illustrated by the fact that when we use the word "will" we mean the actual and tangible document, not the wishes it expresses. Thus to destroy a "will" means to destroy a piece of paper. Once upon a time (before writing was essential) a "will" just meant the wishes or desires of a person; hence a document was not itself a will, but merely proof of what the testator's will was. In those days to talk of destroying a will would have made no sense except as a reference to brain-washing. (Law of Contract 15-16)

In the Preface to Whitelock's Anglo-Saxon Wills H.D. Hazeltine explains of these documents that, "the writings are only the evidence, the documentation, of these gifts; they are not the gifts themselves" (viii). In Anglo-Saxon England a "will" is an oral act performed before witnesses and needs no documentation to make it valid. The most necessary requirement was not written documentation, but that the transaction of the gift "be actually heard and seen" (Hazeltine ix).

During the eighth century the written will was still fairly unusual in England. The textualization of the idea of a "will" appears to have been "ecclesiastical in origin," as:

it was not only developed under clerical influence for the material benefit of Anglo-Saxon churches and convents, but it was ultimately brought in a later age within the scope of the jurisdiction of ecclesiastical courts. At least from the beginning of the eighth century onwards ecclesiastical policy furthered the idea that spoken words were sufficient for gifts and contracts. Lest, however, spoken words fade from the memory, declare ecclesiastical draftsmen in the preambles to eighth-century Anglo-Saxon charters, it is best to have evidence of these words in writing. To the proof of oral acts furnished by transactions-witnesses, which was already a feature of Anglo-Saxon law, there was now the added evidence of writings; and, so far as one can see, it is this new species of proof introduced by the ecclesiastics which helps us more than perhaps anything else to understand the legal nature and purpose of the documents that are now known as Anglo-Saxon 'wills'. (Hazeltine xii)

Again, a strong influence by the church and religious houses on the development of the lex non scripta is evident. Through the influence of the ecclesiastics custom changed so that the evidentiary document (a text) superceded the oral agreement (a context which the text originally witnessed). The context, the act of speaking before witnesses, dropped out of the process of will-making; instead, the text became legally potent in and of itself, free of a context that was now insignificant.

In the medieval common law there is an irrevocable movement to uphold the potency of the written, exteriorized word (a will as a text) at the expense of the spoken, interiorized word (a will as a spoken desire). The text, which as Eric Jager points out is "written on dead animal hides" (70), and is essentially skin, or fleshly covering (and thus fit to represent "death, matter, and absence") takes the place of the spoken agreement, whose orality represents "life, spirit, and presence" (Jager 63-4). Later anxieties about the use of legal documents are surely linked with this lack of "presence," and the sense of an absence or lack in texts. Documents seem to provide certainty, but, the question becomes, what do they provide certainty of? Legally, the written word, the document as "will" or "desire," is increasingly divorced from the voice, the oral expression of will or desire. This displacement of written text and oral context is what the Pardoner's exposes in his performance to the pilgrims.

In the Prologue and Tale, the Pardoner is exhibiting, both verbally and physically, his charters to the other pilgrims. We are told in the General Prologue that the Pardoner has a "walet, biforn hym in his lappe,/ Bretful of pardoun comen from Rome al hoot" (VI.686-7). This wallet full of "pardouns" is displayed conspicuously on his body (in his lap)³ along with other potent symbols (the relics) which dangle freely from his person. The texts, as symbols of his potency, must be displayed, as the Pardoner claims: "I asoille . . . by the auctoritee/ Which that by bulle ygraunted was to me" (VI.387-8). Over and over in the Prologue and Tale the readers' attention will be drawn to texts, as textual display is the theme of the Pardoner's performance (just as oral display is the Wife of Bath's, and a refusal to display is the Man of Law's).

Early on in the Prologue the Pardoner tells the pilgrims that he begins his normal professional routine by exposing texts to his "lewed" listeners. He relates that when he arrives in a town:

First I pronounce whennes that I come,
And thanne my bulles shewe I, alle and some.
Oure lige lordes seel on my patente,
That shewe I first, my body to warente,
That no man be so boold, ne preest ne clerk,
Me to destourbe of Cristes hooly werk." (VI.335-340)

The Pardoner claims that the "shewe-ing" of his "bulles," and especially of "Oure lige lordes seel" on his "patente," serves to "warente" his body. These lines are exhibitionistically suggestive. No one, "ne preest ne clerk," can prevent the Pardoner from doing his work because of the symbolic potency of the "bulled" documents which he displays as his first rhetorical move. According to clinical psychologists, acts of exhibitionism frequently occur "when the man is experiencing a particular threat to his already weak sense of masculinity" (Altrocchi 491); so too, in the Pardoner's case, exhibitionism is tied to an apparent sense of threat against his person when he enters a town.

The Pardoner upholds, exhibits, and flaunts the potency of the "bulles," agreements conspicuously "under seal," to mask the questionable nature of his own oral and sexual potency. His oral impotence reflects the growing impotence not of documents, but of the spoken word (i.e. of the oath) in the common law. Harry Bailly's violent response to the Pardoner's offer of pardon to the pilgrims represents their collective frustration at the potency of the texts (the "pardouns," "bulles," and

"patente"). The validity of these documents should be destroyed by the dissonance between them and their holder's will, expressed in his voice, but is not.

Throughout the Prologue and Tale texts are flaunted as the authorization for the Pardoner's speech. He opens his address to the pilgrims by conspicuously exposing the Scriptural text upon which his regular preaching is based. "My theme is alwey oon, and evere was," he proclaims, "Radix malorum est Cupiditas" (VI.333-4). This Latin text then becomes the foundation of his performance in a new context, his address to the pilgrims. He repeats this Scriptural foundation further on in the opening of the Prologue, saying, "Therefore my theme is yet, and evere was,/ Radix malorum est Cupiditas" (VI.425-6). The Latin of this repeated quotation heightens its conspicuous textuality. Furthermore, the Pardoner's Prologue is given an epigraph, probably scribal in origin, which states, "Radix malorum est Cupiditas." This epigraph then directs the reader's attention to the textual source: "Ad Thimotheum, 6," which suggests that the epigraphic addition was made by a copyist/commentator who understood the significance of "textual underwriting" in the Pardoner's performance. The epigraph draws attention to the fact that the Pardoner's performance is an exhibition of texts.

Not far into the introduction to the Tale the Pardoner explains: "The hooly writ take I to my witness" (VI.483-4); and, a few lines later he directs his listeners to texts again, telling them to remember what "Senec saith" (VI.492). The Pardoner then turns to the Old Testament text which tells of "Adam oure fader" (VI.505); and, then shifts his listeners attention to the text of Paul in the New Testament. The Pardoner emphasizes his textual sources though reiteration, as we see in his repetition of Paul's

name (in both English and Latin, a conspicuously literate move) in the following passage: "O Paul, wel kanstow trete:/ 'Mete unto wombe, and wombe eek unto mete,/ Shal God destroyen bothe,' as Paulus seith" (VI.520-22). The Pardoner then shifts his audience's attention back to the Old Testament with the story of "Sampsoun," and closes this passage by directing them to the texts, telling them: "Looketh the Bible, and ther ye may it leere" (VI.578). A few lines later, he repeats this sentiment, saying: "Redeth the Bible, and fynde it expresly" (VI.586). About fifty lines later the Pardoner reminds the pilgrims that "olde bookes treete" of false oaths (VI.630), orders them to "Witnesse on Mathew," and then quotes directly from "hooly Jeremye" (VI.634-5). The actual Tale is concluded with the Pardoner's notation, "that Avycen/ Wroot nevere in no canon, ne in no fen,/ Mo wonder signes of empoisonyng" (VI.889-91). The Pardoner not only emphasizes texts over and over again, he also emphasizes the supposed literacy of the pilgrims as contrasted to the "lewedness" of his usual listeners. The Pardoner appeals to the pilgrims' own desire for a relationship with the power of textuality.

Not surprisingly, after all his references to texts, at the conclusion of his performance a text is held up as the ultimate source of power for the Pardoner, and for the other pilgrims as well. "Myn hooly pardoun may yow alle warice," (VI.906) he proclaims, exposing his potent charter once again. "Boweth youre heed under this hooly bulle!" (VI.909) he orders them. Then the Pardoner offers to textualize the pilgrims themselves, telling them if, "Youre names I entre heer in my rolle anon;/ Into the blisse of hevene shul ye gon" (VI.911-2). In this statement the Pardoner assumes

for himself the role of author of the final judgement in the pilgrims' cases, a reference both to the writing of names in the "book of life" (Revelation 3.5, 13.8, 17.8, 21.27, 22.19), and in a secular sense, to a recording of a legal judgement. By offering to write them into a text, the Pardoner emphasizes to the other pilgrims that his apparent potency is connected to texts and the ability to write.

We could say that Pardoner's oral performance has more to do with writing than with rhetoric. The Pardoner offers the pilgrims a written "guarantee," or personal contract of salvation. He claims that by writing them into a text he will create himself as a potent pardoner and as a writer on a level with the author of the "book of life." However, this affirmation of his potent status as potential author, a potential which is never carried any further, is made in the context of the Pardoner's defensive and contradictory acts of exhibition.

The perversity of the Pardoner's anti-rhetorical technique is expressed in his charters and other texts, which are exhibited on his body and in the context of his rhetoric. While it appears to many that the Wife of Bath is "a voice of the body," text and voice are not nearly so divorced in her as in the Pardoner. Perhaps this is why the two of them are juxtaposed by the Pardoner's interruption of her speech--to later reveal how, by contrast, the Wife has interiorized writing as perhaps only a non-literate can, while the Pardoner has exteriorized it, as only a literate can. While the Wife recites texts from memory (i.e. by heart), the Pardoner points his listeners to exteriorized writing, telling them to go find things in texts. While the Wife of Bath absorbs texts

into her voice, the Pardoner's voice points outwardly to them. They become fetishized objects of displacement within his speech.

The exhibitionistic act can be defined as "an expression of defiance" (Altrocchi 491). J.F. Rhodes explains:

Like the Wife of Bath, the Pardoner courts the pilgrims by inviting them to identify with his life of adventure and to admire him for his individuality and superiority, his scorn for conventional morality, and his contempt for established authority. (43)

In his exhibitionistic confessions about his professional practices, the Pardoner defies the spiritual content and "auctoritee" of the "bulles." Yet, in his typically paradoxical fashion, he also upholds and exhibits these documents to establish his own "auctoritee." Thus, the Pardoner's exhibitionism, like his rhetorical strategy, works at cross-purposes.

J.M. Russell describes the exhibitionist as one who makes a marked division between containers and their contents. He notes:

the masculine perversions, epitomized by the exhibitionist, the flasher, take some aspect of oneself that the pervert himself regards as liable to be found repellent, as repulsive, and flaunts this as if daring the other person, the container, to accept that repelled part of oneself. The male pervert has found means to externalize his internal contents, and then dares the other to accept (or reject) this. (102)

In the Pardoner's case, the flaunted documents are stand-ins for something in himself he finds repellent. This "something" is possibly his sexuality or his spirituality, or both. The situation is complicated by the fact that the "bulles" are themselves containers and have their own "internal contents." Thus, there is a doubling of exhibitionistic displacement; the Pardoner projects his own repelled interiority onto the

texts, but the texts have an interiority which he also finds repellent. The Pardoner, in a perversely masculine way, tempts the pilgrims to reject both the "bulles" as fleshly and carnal containers for his repelled sexuality, and also to reject the "bulles" themselves for their contents, the offer of a spiritual pardon. This suggests that what the Pardoner considers repellant about himself is both his carnality and his spirituality, confirming Kittredge's belief that the Pardoner truly is "a lost soul" (123).

The dissonance between oral context and written texts in the Pardoner's performance is a paradigm of the dissonance between interior and exterior language, or between orality as represented by the Wife of Bath, and textuality as represented by the Pardoner and the male "auctores" both characters make reference to. Aptly, in terms of the Pardoner's alienating performance, his voice and the body which contains it are in apparent conflict. The General Prologue says of the Pardoner:

A voys he hadde as smal as hath a goot.
No berd hadde he, ne nevere sholde have;
So smooth it was as it were late shave.
I trowe he were a gelding or a mare. (VI.688-91)

While the goat-ishness of the Pardoner's voice suggests Pan-like male sexuality, he is paradoxically a goat without a beard. His body, rather than matching his voice, is like that of a "geldyng or a mare." Thus the goat's voice is contained in a horse's body. While his body and his voice are displaced, his texts are also displaced in his horse-like body and his goat-like voice. To speak like a goat about texts is surely an act of dissonance. A goat would rather, we assume, devour the texts than speak of them, and this is perhaps what the Pardoner is doing in his performance. The animal in the Pardoner is feeding off of texts, so to speak.

The Pardoner exposes the dissonance between his exterior voice and his interior desire through the displacement of his exhibited documents. The Pardoner's exhibition of the texts seems to expose their lack of interiority; furthermore, the Pardoner's apparent lack of potency appears also to be the texts' lack. The exteriority of the "pardouns" (emphasized by their placement on the Pardoner's body) point to their apparent lack of spiritual potency, as they are, like the Pardoner, a "voice" which is divorced from its proper context, the interior "will" of both their author and the speaker. However, the very exteriority of the texts to the Pardoner's use of them play up their potency as symbols of authority. The context the Pardoner creates cannot undermine the legal potency of the "patente" as proof of his spiritual authority to pardon sin. Similarly, nothing that the Wife of Bath says about marriage and the texts which underwrite the practice of it can alter the exteriorized, written laws of marriage, nor the texts she quotes from. For this reason, exteriorized language is more legally potent than interiorized language. The Pardoner's use of displacement thus essentially points to and emphasizes the potency of texts.

As Walter Ong has noted, "there is no way directly to refute a text. After absolutely total and devastating refutation, it says exactly the same thing as before" (*Orality* 79). What you say about a document or agreement after the fact of its creation does not change or affect it. That is why texts are more potent than voice, which can only "speak" and be "heard" in a context. Texts, on the other hand, speak both in and out of context. In the Pardoner's performance the documents have an existence which is beyond, and outside of, their context. The Host's response to the Pardoner is,

accordingly, not directed towards the "pardouns" themselves (which are untouchable), but towards the Pardoner's genitals (which presumable are). The violence which the Host threatens against the Pardoner's sexual symbols is a displaced aggression which should be directed towards the texts of the "bulles." What the Host really wants to cut off is what stands in the place of the Pardoner's genitals, the written charters. He really desires to emasculate not the Pardoner (for whom the operation may well be redundant) but the "bulles," which represent the peculiar, uncontextualized potency of texts and legal documents.

The threat of the Host is an extremely important moment in the Pardoner's Prologue and Tale as it confirms the Pardoner's displacement of his own fear of lack onto the reassuring objects of the texts. The Host threatens the Pardoner with a real lack, suggesting that on an unconscious level he has understood the exhibitionistic displacement going on in the Pardoner's performance. This reading challenges Paul Taylor's position that the Host's attack on the Pardoner, "only confirms the Pardoner's implication that the pilgrims cannot read the truth behind either his posture, his tale, or their holiday excursion to Canterbury" (127). I suggest that, on the other hand, the Pardoner, like sexual exhibitionists in general, may be no more consciously aware of his displacement process than the Host or the other pilgrims are. The Pardoner, Harry, and the other pilgrims may merely apprehend at the conclusion of the Pardoner's performance that their perception of the relationship of texts to contexts, containers to contents, is a highly problematic one. In the Pardoner's performance, texts themselves tempt or create displacement.

The aggression of the Pardoner's oral use of texts provokes the Host's aggression. Harry Bailly responds with a threat instigated by the aggression of the Pardoner's rhetorical affirmation that a written text supercedes its oral context. While Derrida proclaims, "we, like Lévi-Strauss, conclude that violence is writing" (135), the Host responds not to the violence of writing, but to the orally exhibitionistic aggression of the Pardoner.

The Pardoner appreciates and attempts to exploit what the other pilgrims realize at the end of his performance, namely that his religious potency as a pardoner rests on legal documents which are entirely divorced from his and their author's voice and desire. The Pardoner's performance exposes the fiction of the documents he carries. By exposing himself, the Pardoner also exposes the "pardouns," and "bulles," revealing their fiction of a sublime marriage between spiritual Will (a desire) and legal will (a charter). Furthermore, he exhibits this dissonance in the context of a defiant and defensively masculine exteriorization of texts and writing.

With the exception of Harry Bailly, the pilgrims remain silent at the end of the Pardoner's Tale. By exposing his textual potency (in his "pardouns") the Pardoner strips the oral potency from the other pilgrims. The inability of interiorized language (speech) to alter or affect exteriorized language (text) in any effective way has been adequately demonstrated to the pilgrims. The divorce between spirit and text cannot be made any more complete than in the Pardoner's performance. However, the Host's response only further affirms the exhibitionistic fiction the Pardoner has created. Harry Bailly verbally attacks the Pardoner instead of his "pardouns," which are the real source

of fraud. The Pardoner himself has "spoken true" to the pilgrims in the sense that he has not masked his vice; it is the texts which do not speak true in their context.

The Pardoner demonstrates in his exhibitionistic acts of exposing texts and oral boasting that displaced texts are the foundation of his fraud. The Host threatens the Pardoner with castration, or a removal of what the "bulles" signify. However, it is the documents which are the symbols of potency, not the Pardoner's "lacking" genitals. This transference occurs, in Glenn Burger's analysis, because "the more the Pardoner can be maintained as an absence of potency, the more the Host can assert his own masculine and moral authority and establish that he is no false copy but the real thing" (1146). But, the threat of castration seems to make the Pardoner more potent than he has previously appeared to be in the description of him as "a geldying or a mare." The question then is whether the "false copy" is the Pardoner or his documents. If the documents are genuine, as their "bulles" testify, then the Pardoner himself is the forgery. I suggest that the Host's threat is directed towards the person of the Pardoner, and not his "pardouns," because only he, and not the texts, can be and is silenced by a refutation. The Pardoner is an unauthentic document when contrasted with his texts, which are continually affirmed as legally potent.

We can question whether the Pardoner is really lacking in his masculinity, as the narrator of the General Prologue leads us to believe, or whether he only appears to be. If his lack is only an apparent one, then his texts signify not lack, but the anxiety about it. The very fact of an exterior sign, either sexual or textual, creates an anxiety of loss. The anxiety over textual lack may then also be a displacement of other fears.

When we consider the perversion possible in the oral realm--the reduction of the oath to a commodity, the rhetorical misuse of texts--texts themselves seem relatively benign. The oral context surrounding a text can easily be perverted or altered, while the text itself remains static or "valid." It may be feared that the legal system, like the Pardoner, has an interior lack, in the sense of "Will" as desire, not an exterior lack, in the sense of "will" as document. In the workings of the medieval legal system there may exist a fear, like the exhibitionist's castration anxiety, that a sense of validity is lost in the increasing dependency upon documents as a means of expressing will or desire. It may be feared that the divorce created between texts and contexts is a split between containers and contents, between written signs and spoken desires.

The anxiety about writing may be a displacement onto something physical and exterior (a text) of an interior conflict which can be expressed in the question, "does the text lack in the way that I fear I lack?" If we all, male and female, fear a lack, texts can become a locus of displacement for this anxiety about potency and the ability to express desire (what the Wife of Bath has triumphed at). As Derek Pearsall notes of the contrast between the Pardoner and the Wife:

The Pardoner . . . has no thoughts or feelings . . . no hopes or regrets. He never talks about his motives, except to reiterate monotonously that his purpose is ever one. He never once says "I think" or "I feel," but only describes what he has done or what he will do. Without soul, feeling, or inner being, he is a creature of naked will, unaware of its existence but in the act of will. ("Chaucer's Pardoner" 361)

As I see it, the Pardoner does not discuss his desires and motivations because his will and desire have been displaced onto texts. Just as documents have displaced the oral context of will-making in the legal system, conversely documents and texts are a locus

of displacement for the oral expression of desire and will in the Pardoner's performance. There is nothing left for the Pardoner to "desire" once he has displaced and then expelled both the physical texts and their spiritual contents.

The Pardoner uses texts and writing to get a hold over others, and this may be the only form of desire available to him. The aggression of the Pardoner's speech may result from his misunderstanding about what is, and is not, truly seductive. The offer of pardon which he presents to the pilgrims in his conclusion is, in essence, an attempt to humiliate the pilgrims. His command to "kiss the bulles" involves the exposure of a weapon he holds over them and a threat which orders them to debase themselves before it and him. His own alarming "lack" of potency and normal sensibility is compensated for by displacing himself onto the texts which he waves over the pilgrims' heads. As Burger posits, "the Pardoner's exhortation to kiss his relics suddenly pushes his quotation of authority, which is powerfully present in his tale, to an absurd extreme" (1145). The pilgrims are silent in response to this threat and menace; only the Host responds with a threat that was commonly directed towards rapists. Burger aptly refers to this threat as one of "the Host's extreme assertions of 'authority' and 'normality'" (1146). The Pardoner's combined "lacks," (spiritual, physical, cognitive, and rhetorical) may make him truly dangerous, as the compensation for them must be the constant menacement and humiliation of others.

While Paul proclaims: "the letter killeth but the spirit giveth life," the Pardoner proclaims that his spirit can be as killing as his letter. He exposes the possibility that his texts are more potent, affirming, and life-giving than he is, just as legally the letter

is more potent or life-giving to the agreement than speech, the oral act which no longer creates a valid contract. The displacement of spirit and letter, contents and container, is the basis for perversion and for the Pardoner's attempt to "disgust" the pilgrims. In an attempt to define the "disgusting," Russell explains that, "we don't want things that are supposed to be inside to get outside the skin. That is my clue to the disgusting: it pertains to circumstances where that which is supposedly inside the skin is not in the container" (99). If the parchment of texts is "skin," then the disgust which the Pardoner tempts the pilgrims to feel is a disgust over something which seems to have escaped out of the skin. The Pardoner tempts the pilgrims to believe that "what is supposedly in the skin," the genuine spiritual pardon, "is not in the container." By attempting to separate the container of the text away from the spiritual contents, within an exhibitionistic context, the Pardoner tries to disgust the pilgrims.

Discussing the literary legal debates contained in the works of Robert Grosseteste and St. Anslem, J.A. Alford remarks: "the Devil always comes off as a pretty poor lawyer" ("Literature and Law" 944). The Pardoner is also comes off as "a pretty poor lawyer" because he makes the split between text and context, between the legality of his documents and their purported spirituality, so obvious that he provokes disgust. He is un-lawyerly as he fails either to subsume texts into his rhetoric as the Wife of Bath does, or covertly hide them like the Man of Law. The Pardoner makes a point of showing the pilgrims how displaced his texts are in the context he creates for them. This displacement is highlighted in The Pardoner's Prologue and Tale to demonstrate how texts can supercede the idea of context. The oral context in which

covenants were originally created is now superceded by the texts, whose dangling seals make the documents themselves into convenants. However, the documents are covenants in the legal, but not necessarily the the spiritual, sense of the word. The sealed charters which the Pardoner conspicuously displays represent what Jesse Gellrich refers to as "the theft of spoken promise" (161), when "the source disappear[s] into the copy" (xi). While the pardons are legally valid, the context the Pardoner creates for them invites the pilgrims to question whether they are still spiritually valid. The loss created by the theft of a validating context from the documents is what the Pardoner's displacement exposes.

ENDNOTES

¹Of the function of the seals F.G. Kempin explains: "By 1284 (the Statue of Wales) it was clear that covenants could be used to bind one to any promise except a debt By the end of the thirteenth century it was required that the writing must have the seal of the promisor affixed to it. The seal previously had been used in the action of debt to prove the validity of the document. If it was sealed, it was genuine, but if it was not sealed, the defendant was free to prove it fraudulent" (Legal History 78).

²"Covenant" is "the medieval lawyers' word for agreement" (Simpson, Law of Contract 16). The three actions of covenant, debt, and detinue, "formed the backbone of the medieval law of contract Covenant, which was normally an action for unliquidated damages, lay to provide a remedy for tort or wrong of breaking an agreement to do something other than pay a debt; it could only however, be used in the case of formal agreements under seal" (Simpson, Law of Contract 6). In the thirteenth and fourteenth centuries, F.G. Kempin summarizes, "covenant was the common law's closest approximation to the concept of a contractual duty" (Legal History 78).

³While Larry Benson, et al. define "lape" as a "large pocket (in a fold of his clothing)" (34), it seems just as reasonable to accept the definition that the word retains in modern English, "a person's lap" (M.E.D., Vol.5, PT.2, 651-3). Another

interesting meaning for "lappe" in the context of the Pardoner's portrait is, "the female pudendum" (M.E.D., Vol.5, PT.2, 651-3).

CHAPTER FOUR

Representing (Re)production: The Canon's Yeoman's Revelations Of Textual Impotence

In his Prologue and Tale the Canon's Yeoman gives an account to the other pilgrims of his endless labours to "multiplie" matter alchemically. Of this project he explains to the Canterbury group: "We blondren evere and pouren in the fir,/ And for al that we faille of our desir,/ For evere we lakken oure conclusion" (VIII, 670-2). In this passage, whose theme he often repeats, the Yeoman describes the frustration of his and the Canon's attempts to consummate the "alchemical marriage" which the texts of alchemy alluringly speak of. The whole purpose of the Yeoman's work has been to realize the potential of this marriage. However, the Yeoman must reveal the shameful secret of alchemy: that alchemists and alchemical philosophy are impotent and the sought-after marriage can never be consummated. The Yeoman strives to explain to the pilgrims that there has been no potential for material (re)production in his work. While Britton Harwood has argued that the Canon's Yeoman's Prologue and Tale involves "a mystification of work" ("Chaucer and the Silence" 342), I argue, rather, that the Yeoman presents a rhetorical de-mystification of alchemy's textual mystification of work and material production.

In the Prologue and Tale the impotence of alchemy as a process which attempts to (re)produce precious metals is paralleled to the allegorical impotence of alchemical "auctores" and their texts. Ultimately, the Yeoman produces and multiplies nothing but the representation of an elusive potential in his spoken words, just as alchemical texts,

in the Yeoman's view of them, are endlessly self-replicating, (re)producing only more and more texts which seduce readers with a held-out potential meaning. The Yeoman's attitude toward texts aligns with an ideological (if not practical) resistance to textualization in the English common law.

The legal concepts of counterfeiting and forgery are related to the alchemical project in both its metalurgical and philosophical aspects. Chaucer appears in the Canon's Yeoman's Prologue and Tale to see practical alchemy as a counterfeiting operation which merely pretends to (re)produce precious metals, and alchemical texts as embodying a forged and counterfeit philosophy which only appears to contain meaning. Ultimately, the Yeoman accuses alchemy of using language in a counterfeit manner. In both its physical and textual aspects alchemy is represented in the Canon's Yeoman's Prologue and Tale as a textualization of physical, moral, and rhetorical impotence.

The fear of counterfeiting and forgery informs a number of pieces of legislation passed in the late Middle Ages. This may be connected with a fear of what R.A. Shoaf calls "the irrationality and the mystery of money" (Dante 7). In Shoaf's conception, "the problem of meaning in money is analagous to the problem of meaning in language" (Dante 8). Statutes were passed in the thirteen and fourteenth centuries in the first English attempts to legislate standards for coins and precious metals. Like the language a nation uses, its coinage must be created out of meaningful and trustworthy signifiers. The King's image on a coin, like the Leopard's Head on an ingot, is a symbol which is supposed to guarantee fullness, plenitude, and worth--high value as opposed to empty

value. But, counterfeiters use the same encoded symbols to pass empty value off as high value. When coinage and precious metals are threatened by counterfeiting, not only the economy of the nation, but the ideological system that establishes worth and value is called into question. Forgery threatens the very idea of "value": of trust in signs and signifiers (which include numerical symbols and written words). The "exposure" of the Yeoman reveals that the practice of (re)productive fakery comes forth from, and also leads into, a void.

The impotence of the Canon and the Yeoman can be connected with the concept of "counterfeiting," which is the art of false representation. I will argue, based on the evidence of an early Greek manuscripts, that practical alchemy attempted to produce metals which seemed like gold and silver; thus, on this level alchemy was a counterfeiting operation. While Harwood has argued that in the Canon's Yeoman's Prologue and Tale alchemy "is not an allegory of production. It is an exotic instance of it. The Yeoman is apparently the only wage laborer anywhere in Chaucer--the only person hired to make a commodity" ("Chaucer and the Silence" 343), it seems, on the other hand, that the Yeoman presents alchemy as an allegory of non-(re)production. The very point the Yeoman repeatedly states is that there has been no production; rather than making a commodity, both the Canon and the Yeoman failed to (re)produce anything.

Based on a textual foundation of false representation, the Yeoman's alchemical quest fails to produce material of value; all is loss and reduction rather than increase and endless reproduction. In the Yeoman's alchemical enterprise, the potential for

(re)production cannot be realized. Alchemy is fascinated with the potential for material production, but the fluidity of base metals exists only on the level of language. Alchemy was far more (re)productive as a literary project than as an industrial or scientific one.

Just as the statutes address the problem of nothing (counterfeit and foreign coins) masquerading as something (legal tender), the Yeoman closes his performance by addressing this problem in texts. The Yeoman exposes the forged and counterfeit value of alchemical texts; this is why his Tale closes with an exposure of the texts. In contrast with the often noted veneration of texts in medieval culture, the Yeoman points to the possibility of textual impotence. The English common law's resistance to codification mirrors this attitude. The common law uses experience and custom to negotiate the void left by legal codes and the written language of the lex scripta.

During the late Middle Ages England was affected by the debasement of coinage occurring on the Continent. Low denomination "deniers" made of heavily alloyed silver were making their way (illicitly) from Italy and France into the British economy, probably because inflation in England created an increased demand for coinage. These very small denomination coins were needed for use in retail trade. Robert S. Lopez estimates that the cost of living in England quadrupled between 1150 and 1325 (71). A sense of anxiety over the diminishment and reduction of coinage is evident in legislation passed in England during the thirteenth and fourteenth centuries.

The first statutes dealing with the abuse of coinage were created during the reign of Edward I. The Statutum De Moneta was enacted in 1292. Its purpose is:

To counteract the damage and dangers which have happened to the Sterling money of England. Orders are issued by the King that it be forbidden throughout the land, in all the market towns, for any man on pain of grave punishment to be bold enough to spend or handle any money or coin other than that of the Kingdom of England, Ireland and Scotland. (20 Edw. I, 4)

The Statute warns that only coins issued by British governments are legal tender. It specifies that people bringing coins known as "deniers" into the country are to be reported to the authorities, and the coins confiscated by the King.

The Articuli De Moneta (1292) give explicit details about thirteenth century counterfeiting practices. Its stated purpose is to place a strict ban on the use of continental deniers as "This is money which is made abroad and does great harm to our King, to our people and to the English coin" (20 Edw I, 6). Also banned by the Articuli De Moneta is:

a type of coin made in Avignon under the name of Edward King of England and which can only be detected by its weight. Coins are made by melting down pewter and lead and putting this metal between two leaves of silver and then making this into a coin. This malpractice causes great damage to the community. (20 Edw. I, 6)

As we see from this statute, not only were small denomination, debased deniers seeping into the English economy to fill a void the pure silver English Sterling created for petty change, but counterfeit coins were invading from the Continent. The Avignon coin is a clear symbol of false representation: its worthlessness (the leaden core) is masked under a thin veneer (of gold) which "represents" great value.

The first pieces of legislation regarding precious metals also appear in the thirteenth and fourteenth centuries. Statutes created in 1238 (22 Hen. III) and 1300 (28 Edw. I, stat.3, ch.20) create quality standards for gold and silver. The statute of 1300

stipulates that goods made of precious metal must be stamped with a mark indicating the metal's quality, and that gold and silver must be "wrought of one uniform standard." The statute also stipulates that gold and silver, "shall not be offered for sale until assayed by the wardens of the craft and further that it be marked with the Leopard's Head" (28 Edw.I, stat.3, ch.20). The Statute of Purveyors, passed in 1350, contains the Treason Act which makes counterfeiting of the King's seals and coinage one of the most serious offences in the realm. The Act states that it shall be treason:

If a man counterfeits the King's Great of Privy Seal, or his money, and if a man brings false money into this realm counterfeit to the money of England, knowing the money to be false, to merchandise and make payment in deceit of our said Lord the King and of his people. (25 Edw III, stat. 5, ch. 2)

The punishments stipulated for these trespasses were severe; men were to be drawn, hanged, disembowelled alive, beheaded, and then quartered; women were to be burned alive. The abuse of coinage was considered to be an attack upon the King and the realm itself, for it attacks the proper representation of the King and his worth.

The statutes related to counterfeiting are significant for a reading of the Canon's Yeoman's Prologue and Tale because the alchemical project, not just of the Canon and his Yeoman, but of practicing alchemists in general, bears a resemblance to counterfeiting operations. One of the most ancient alchemical texts known to us is a Greek papyrus, Leyden Papyrus X,¹ written near the end of the third century A.D, but probably copied from earlier sources (Caley 1149-50). The work offers practical recipes for making gold, silver, and "asem," for purifying and testing metals, and for changing the color of other metals so they will look like gold (referred to as

"colouring"). Out of 111 recipes, 75 deal with methods for purifying metals, making alloys, testing metals for purity, imitating precious metals, and colouring the surface of metals. It is quite obvious from a reading of the recipes that "manufacturing," "colouring" and "purifying" gold, silver and "asem," are attempts to counterfeit precious metals. While Gareth Roberts suggests that "increasing" precious metals likely meant, "increasing its weight but decreasing its purity in alloys with other metals" (23), he adds the caution that, "early metallurgists might have thought that they were simply producing more gold, since they had no fixed ideas about what constituted 'gold'" (23-6). However, I argue that Leyden Papyrus X refutes the notion of the "naive metallurgist" as there is clear evidence of deceitful intentions.

For instance, the sequence of recipes from 15 to 17 shows an increasing clarification of the author's intent. Recipe 15 is for "The Coloration of Gold;" it vaguely describes its purpose as, "To color gold to render it fit for usage." Why gold needs another color than its own is not made clear. Recipe 16 is for "Augmentation of Gold," and this appears to be a fragment, so it is not clear from the directions exactly what "augmentation" means. However, recipe 17 is boldly entitled "Falsification of Gold;" its directions state:

Misy [probably iron or copper pyrites or sulfates] and Sinopian Red [possibly iron ochre or red lead], equal to one part of gold. After the gold has been thrown in the furnace and it has become of good color, throw upon it these two ingredients, and removing let it cool and the gold is doubled. (Caley's trans.)

Berthelot suggests that recipe 17 is the continuation of recipe 16 and the title "Falsification of Gold" is a comment or gloss erroneously copied into the papyrus by

a scribe. The scribe would then have "erroneously" given the true intent of the recipe in the word "falsification" (which does not occur again in the papyrus).

While the wording of the recipes is veiled, their intent is fairly obvious. Recipe 26 for "Purification of Silver" reads:

How silver is purified and made brilliant. Take a part of silver and an equal weight of lead; place in a furnace, and keep up the melting until the lead has just been consumed; repeat the operation several times until it becomes brilliant. (Caley's trans.)

Here the words "purification" and "brilliant" seem to be code-words to cover the fact that a silver alloy is being produced. Roland Rowell notes that "caches of Roman coins buried for years and disinterred by ploughshares have frequently been found upon assay to be seriously debased" (5), and it is doubtful that classical alchemists could have been naive enough to believe that "cutting" silver with lead made it more "brilliant." Other recipes in the papyrus for "Coloring in Silver," that is, "for silvering objects of copper" (Recipe 27); for "Manufacture of Copper Similar to Gold" (Recipe 28); for "Whitening of Copper . . . in order to mix it with equal parts of asem, so that no one can recognize it" (Recipe 23); and for "Coating of Copper" so that, "the copper shall have the appearance of silver" (Recipe 42) give evidence of the intent to produce counterfeit representations of precious metals.

In all, 22 recipes deal with the doubling of "asem" (2 recipes) and the manufacture of "asem" (20 recipes). Some recipes included in this count have no titles or are called "Another;" however, their placement and directions make them almost certainly recipes for "asem." According to Caley, the names "asem" and "asemon" refer to "alloys intended to imitate gold or silver, most generally the latter" (1151).

According to this interpretation of the word, most of the papyrus is given over to recipes for the production of imitation gold and silver. Glossing the word asemon, Berthelot explains:

Le mot asemon était regardé au XVII^e siècle comme représentant l'argent sans marque, c'est-à-dire plus au moins impur, renfermant du plomb, du cuivre ou de l'étain; en un mot tel qu'il se produit d'ordinaire à l'état brut dans la fonte des minerais. (Les Origins 89-90).

Berthelot also notes that the word has, "plus de vraisemblance du mot égyptien asem, qui exprime l'électrum, alliage d'or et d'argent" (Les Origins 90). If the word asemon was used in seventeenth-century France to refer to unhallmarked silver (which had been cut with lead, copper, or tin), the original alchemical project of manufacturing "alloys to imitate pure silver" had an influence well into the heyday of alchemy.

The statutes reveal that by Chaucer's time there were fixed ideas about what constituted "gold" and "silver," and, furthermore, the making of alloys was well understood. The statutes relating to currency and precious metals were created to counter a perceived threat to the coinage of the realm: an awareness of a threatened impotence in currency. Fears about a shortage of precious metals for minting were caused by increased demand in a country that resisted the debasement of its silver coinage. This fear and the threat caused by the illicit introduction of foreign currency and counterfeit coins, swirl around the edges of alchemy. As John Day notes, historians accept as a truism that "money was chronically short" in the late Middle Ages (55). The fear of an increasing impotence in coins was perhaps the impetus behind the alchemical belief that coinage could be endlessly "multiplied." The need for

more currency may have led to the hope that the "seed" from which it is made could be endlessly replenished.

Alchemical writers rendered the process of increasing and producing precious metals in terms of a marital and sexual allegory. Late medieval and Renaissance alchemical works regularly "compare the alchemical process to the gestation, birth and nutrition of a child" (Roberts 22). Joseph E. Grennen notes that the idea of the chemical wedding "was based on the very ancient analogy between the alchemical opus and human generation, which gave rise to the theory that masculine and feminine principles were needed to begin the Work" (469). In later alchemy, all metals were believed to be generated out of mercury and sulphur, and the chemical wedding of male sulphur and female mercury was consummated in the alchemical vessel, which many texts describe as a marriage bed (Roberts 84-86).

The Yeoman opens the Tale with a long passage describing his and the Canon's attempts to officiate at an alchemical wedding. As in the Prologue, the Yeoman laments the futility and sterility of their efforts. He bemoans of his quest for "The philosophres toon,/Elixer clept" (VIII 862-3):

And al oure sleighte, he wol nat come us to.
He hath ymaad us spenden muchel good,
For sorwe of which almoost we wexen wood,
But that good hope crepeth in oure herte,
Supposynge evere, though we sore smerte,
To be releevd by hym afterward. (VIII 867-872)

In trying to produce the Elixir of Life the Canon and Yeoman reduce themselves to wasting "muchel good." The Elixir, symbol of vitality and potency, will not come to them, the Yeoman laments. They spend and waste their "good" trying to produce the

seed of life; ever seeking relief, they get nothing but a enticing promise of delayed gratification. "Supposynge evere . . . To be releevd" by the Elixir, they are never brought to any "conclusion."

Like the Canon of the Tale, the two partners have stooped to borrowing their "seed" silver from other men. They themselves produce nothing, and have lost what they did have. In the Prima pars of the Tale the Yeoman gives a vivid description of waste and loss, the only products of their attempts to "multiplie." Waste is most vividly portrayed in the description of the explosions which rock the workroom. The Yeoman tells us:

Ful ofte it happeth so
The pot tobreketh, and farewl, al is go!
Thise metals been of so greet violence
Oure walles mowe not make hem resistance,
But if they weren wroght of lym and stoon
They percen so, and thurgh the wal they goon.
And somme of hem synken into the ground--
Thus han we lost by tymes many a pound--
And somme are scatered al the floor aboute;
Somme lepe into the roof. (VIII, 906-15)

The seed, which must by now be borrowed, is then lost by being spilled on the ground, scattered on the floor, and blasted through the walls and roof. "Violent reactions will occur" when mercury comes into contact with a variety of other substances, a modern chemist explains (Sittig 1045), and in their blind experimentations, alchemists must have frequently created explosive combinations in which "much good" was lost. This waste of the seed results in an increased (re)productive sterility for the Canon and the Yeoman.

The Tale's wily Canon can manage to fool the priest into believing that impregnation has occurred in the alchemical vessel and something has been produced. However, this production is faked. The silver has been hidden previously in a hollowed out "cole" (VIII, 1177) and the end of "an holwe stikke" (VIII, 1265). What orgasmically comes forth has not been produced by the Canon at all, but borrowed from another man. The Tale, like the Prologue is then another revelation of the shameful secret of alchemical impotence. Faking it is the best performance that the fictional Canon can manage. While the silver is real, the process of production is faked.

Alchemy is like counterfeiting and forgery as the practitioner is producing something whose value or origin is concealed and falsified. By concealing the true origin of his silver ingot, and thus "representing" sterling silver as alchemical silver, the fictional Canon fits the definition of a forger. The Canon is creating forgeries because, "the essence of forgery is that it is an instrument which tells a lie about itself in the sense that it purports to be made by a person who did not make it" (Rowell 69). This definition also virtually defines the entire canon of alchemical literature. As Roberts notes:

alchemists claimed a host of venerable authorities who practiced alchemy or wrote alchemical works Just as alchemists claimed distinguished ancient figures as legitimising predecessors, so alchemical works apocryphally fathered themselves upon venerable ancestors most of the distinguished authors claimed by alchemical treatises had nothing to do with those works going under their names. (13-17)

In Roberts opinion, "Chaucer's 'Arnold of the Newe Toun' and Lull were two of the most respected medieval authorities, but Lull probably wrote none of the alchemical treatises that gave him this reputation and Arnold hardly any, if any at all, of those

ascribed to him" (18). The desperation of their quest for authoritative sources and authors is revealed when later alchemical writers quoted Chaucer's Yeoman as a source of alchemical knowledge in their treatises. While S.F. Damon uses this as evidence that Chaucer was "not only in sympathy with [alchemy], but possibly knew (and if so, respected) the famous secret" (782), it seems, rather, to reveal a desperate paucity of material. Alchemical authors stoop to borrowing their "seed" of ideas from anyone they can pull into their canon.

As Chaucer must have been aware, alchemical writers had a compulsive desire to establish a sense of authority for their art by giving it origins in antiquity. This origin is extremely vague. The early Greek texts are "pseudonymous, apocryphal and dubious" (Roberts 19). Texts are often attributed to dieties and Biblical figures. Allison Coudert notes that "Alchemists attributed works by the score to Adam, Moses, his sister Mary (Miriam), to Cleopatra, Hermes Trismegistus, Thomas Aquinas, Roger Bacon, Albertus Magnus, even to Pope John XXII, who had issued an edict against the practice of alchemy" (105).

Considering the dubious nature of the alchemical canon it is ironic that the Yeoman's Canon has a particular distrust of spoken language. He ironically believes this to be the vehicle of language which will lead to his downfall. The narrator tells us:

Whil this Yeman was thus in talkyng,
This Chanoun drough hym neer and herde al thyng
Which this Yeman spak, for suspecioun
Of mennes speche evere hadde this Chanoun. (VIII, 684-87)

The Canon's suspicion of speech leads him to order the Yeoman: "Hoold thou thy pees and spek no wordes mo" (VIII, 693). The Yeoman, he claims, is about to, "discoverest that thou sholdest hyde" (VIII, 696), that is, the secrets of their trade. However, after the Canon disappears, the Yeoman defiantly declares: "Al that I kan anon now wol I telle" (VIII, 704). This statement of the Yeoman is defiantly opposed to the use of language by the Canon and in alchemical texts (another misleading "canon"?). Alchemical authors are often metaphorical to the point of incomprehensibility. For instance, Zosimos of Panopolis (c. A.D. 300) describes mercury as:

the hermaphrodite, which is always escaping, pressing on into its own nature, the divine water of which all have been ignorant, whose nature is hard to contemplate for it is neither metal nor water which is always moving, nor a body, for it is not dominated. (original in Berthelot, Collection, Vol. 2, 143-4, Roberts' translation)

The enigmatic and elusive quality of quicksilver characterizes the use of language in general by alchemical writers. Mercury can be fragmented and then turned whole again, fragmented and recombined endlessly. Like the silver beads of metal, the language of the alchemical texts is almost impossible to hold onto or grasp.

Both rhetorical emptiness and physical impotence can be related to mercury. Mercury's toxic effects upon the human nervous system correspond with the Yeoman's behavior and the style of his rhetorical performance. As J.C. Campbell notes: "The Yeoman has sometimes been accused of being confused . . . His emotions fluctuate widely during his performance, from anger to awe to sarcastic humor to credulousness" (174). Judith Herz has also commented on the Yeoman's mercurial qualities:

the Canon and his Yeoman enter with one attitude only to change it in the next moment. These two move into the Canterbury world actively,

energetically; they burst into it. The narrator refers to sweat five times in twenty lines of the Canon's description. And, once arrived they do not stay still. The shifting process continues as the Yeoman gradually reveals the extent of his scorn for the Canon. (232)

Commentator's on the Yeoman's performance in the Prologue and Tale have overlooked the fact that according to descriptions of their practices, alchemists, like hatters in later centuries, would have commonly suffered from nervous disorders caused by mercury poisoning. Mercury was an essential element in alchemical work for more than purely metaphorical reasons. It was used because "it is a good solvent for other metals, forming some compounds but usually giving alloys which are known as amalgams," and mercury will easily amalgamate with silver and gold (Hopkins 720). However, at room temperature mercury "vaporizes slightly, a fact of importance because its colorless and odorless vapor is extremely toxic, with cumulative effects" (Hopkins 719-20). By the Yeoman's account, he works continuously to "multiplie," thus his exposure to mercury vapour must be high. He also seems to understand the process of vapourization, as he complains to the pilgrims that, "fumes diverse/ Of metals, whiche ye han herd me reherce,/ Consumed and wasted han my reednesse" (VIII, 1098-1100).²

Mercury's toxic effects are a result of its "predilection for the central nervous system" (Amdur 647). Mercury "accumulates in the brain quickly during exposure but is released from the brain very slowly" (Sittig 1045). The effects of chronic exposure to mercury vapour can result in, "changes in personality and behavior, with loss of memory, increased excitability (erethism), severe depression, and even delirium and hallucination" (Amdur 648). The long-term effects of mercury exposure would account

for the Yeoman's excited speech, his mercurial entry into the entourage, and his revelations of increasing despair, and impotence.

The Yeoman is not only affected by mercury, he appears to mimic the metal's most noticeable characteristics. The Yeoman's much-emphasized sweating is like the sweating of the metal itself, its vaporization. The Yeoman's paleness reflects the paleness of mercury's silver colouring. The metal was held to be the female partner in the alchemical marriage, as its cool, moist paleness contrasted with the warm, dry "reedness" of the masculine partner, sulphur. If the Yeoman is losing his "reedness," and becoming moist and pale, alchemically this implies that he is losing his masculinity. If he is being overtaken by mercurial characteristics then he is being feminized. The alternating expressions of excitement and despair caused by mercury's cerebral toxicity combine with the metal's other toxic effects--the Yeoman's sense that he is an impotent man, an empty vessel.

Just as the origins of the texts leads onto false trails and pathways, the language of the texts misleads the reader by hiding, rather than revealing, or perhaps even containing, meaning. The problem of clarity stems from the fact that, like the Canon's and Yeoman's hidden enterprise in the "hernes" and "lanes blynde," alchemy was a secret art which used language in a manner which was intentionally obscure. As the Yeoman himself remarks, "Philosophres speken so mystily/ In this craft that men kan nat come thereby,/For any wit that men han now-a-dayes" (VIII, 1394-96). Directly following this statement, the Yeoman makes two more rather cryptic comments on the use of language in alchemical texts. He says:

They mowe wel chiteren as doon jayes,
 And in hir termes sette hir lust and peyne,
 But to hir purpos shal they nevere atteyne.
 A man may lightly lerne, if he have aught,
 To multiplie, and brynge his good to naught! (VIII, 1397-1401)

One is led to question whether the pronouns "they" and "hir" in the first three lines refer to the philosophers or to their followers. I would translate the lines: "they (i.e. the men who read the texts) may as well chatter (i.e. speak orally) as jays do, and put all their lust and pain into words (i.e. spoken ones), for their (alchemical) goal shall never be attained." If the Yeoman is speaking of himself here, he is then differentiating his spoken words (which are an expression of his desires and sorrows) from the written words of the philosophers. To "chiteren as doon jayes" is an ambiguous simile which could illustrate both the meaningless enigmas of the philosophers, or the Yeoman's oral expression of his emotional truths. The placement of these lines after the preceding ones (VIII 1294-96) in which "Philosophres" is the obvious subject, leads the reader to assume that "they" and "hir" refer to the texts of the philosophers, and not to men like the Yeoman. However, ambiguity is created here because this sentence is sandwiched between one whose subject is the "Philosophres" and one whose subject is "A man." The Yeoman obliquely moves from discussing the texts of the philosophers to vague pronouns which may refer to the philosophers or to their followers, and then moves to speaking about himself (although somewhat obliquely in the words "A man"). The question created by this use of pronouns is whether the chattering of jays (referred to in VIII, 1397) is meaningless written language, or meaningful oral revelation. The conclusion of the Yeoman in this passage is that even though the texts of alchemy are

difficult to understand, through experience one can easily discover the real secret of alchemy: how to turn something ("aught") into nothing ("naught"). Here the Yeoman holds up experience as his real source of learning. While texts have been meaningless, experience has conveyed the truth to the Yeoman.

Just as the Prologue closes with declarations of defiant speech by the Yeoman in the lines: "Al that I kan anon now wol I telle" (VIII, 704), and, "I wol nat spare;/ Swich thyng as that I knowe, I wol declare" (VIII, 718-19), the Tale closes with defiant declaration of the intent to reveal. "And right as swithe I wol yow tellen heere/ What philosophres seyn in this mateere" (VIII, 1426-7), the Yeoman declares. The secret of Hermes is that a man who "Of philosophres understonde kan;/ . . . he is a lewed man" (VIII, 1444-45). The "lewed" (those without full literacy) and the "learned" (those with literacy) are reduced to the same level in the Yeoman's performance. This leveling is a part of the Yeoman's process of revealing that the source of his frustration is textual. I, thus, disagree with the position that at the end of the Tale Chaucer proceeds to defend "true" alchemy (Haynes 17, Damon 783).

The quotation of Senior's words reveals the emptiness of alchemy's textuality. When Plato is asked to "name the privee stone" (VIII, 1452), he answers that it is "Titanos" (a cover name, a signifier which does not signify); and, when asked to clarify this cipher he calls it "Magnasia" (giving another cipher). Senior then accuses Plato of explaining the "ignotum per ignocius" (VIII 1467) that is, using language as a meaningless enterprise. When asked again to define "Magnasia" Plato responds with

another enigmatic statement: it is a water made of four elements. Then, when asked to give the "roote" (root meaning) of the water, Plato responds:

"Nay, nay . . . certein, that I nil.
The philosophres sworn were everychoon
That they sholden discovere it unto noon,
Ne in no book it write in no manere. (VIII, 1462-6)

Plato reveals that the endlessly fathered texts of alchemy are counterfeit because the authors were sworn before they began not to reveal the secret. Thus, the texts which (re)produce themselves into a vast alchemical canon are worthless signifiers of meaning. Like the counterfeit coins from Avignon, they are lumps of lead pretending to a value and meaning they do not possess. The real "secree of the secretes" is that alchemy is the art of counterfeiting and forgery. Like these covert operations, alchemy attempts to make nothing look like something.

The Canon's suspicion of the Yeoman's oral revelations contrasts with the credulity he displays in devotedly following the doctrines of forged and meaningless texts. The only things in the Canon's Yeoman's Prologue and Tale which are not empty, forged, counterfeit, or impotent are the Yeoman's spoken words. In his confession of the emptiness he has discovered in himself and his work, the Yeoman uses language to convey meaning, in contrast the philosophical texts, which use language in the most perverse way possible, not to convey meaning. The emptiness of textuality is thus held up against the fullness of speaking. The chattering of jays is, after all, a description of textual emptiness.

The rhetorical performance of the Canon's Yeoman Prologue and Tale represents attempts at coming to a "conclusion" which end at "naught." This may

justify this work's inclusion near the end of a large and unfinished work of literature. James Dean notes that "The Yeoman and the Canon, who link up with the other thirty pilgrims at Baoughton, in effect rescue the Canterbury Tales book from its own framework and structure, which while not rigid and uncompromising, could not easily have led to closure without some external event" (752). The only real closure or conclusion attained in the Prologue and Tale is found in the speech of the Yeoman when he states, "And there a poynt, for ended is my tale" (VIII, 1480). The Yeoman's rhetorical performance has revealed that there has been no end reached in any of his other endeavours. The work never came to anything; instead, what he had of value was reduced to nothing.

Anxieties about the reduction of value in texts underlie the Canon's Yeoman's Prologue and Tale. While the Pardoner upholds texts as more powerful than contexts, the Yeoman undermines the value of texts. His context (his story) debases the value of the texts he quotes from. He reveals that language about emptiness (his 'oral' performance) is not at all the same thing as the empty language of alchemical texts. Thus, the Canon's Yeoman's Prologue and Tale expresses a fear of emptiness not only economically, but textually. The texts of alchemy are similar to the paradox that, "The zero is something that must be there in order to say that nothing is there" (Menninger 400); in other words, language is needed in order to represent the potential for meaningless expression in writing.

In light of the Canon's Yeoman's Prologue and Tale we can consider again Bracton's statement: "Though in almost all lands use is made of the leges and the jus

scriptum, England alone uses unwritten law and custom. There law derives from nothing written [but] from what usage has approved" (Thorne's trans. 19). As a statement of fact, Bracton's insistence on the unwrittenness of the common law is not completely accurate. As Henry Sumner Maine has pointed out, the purported descent of Roman law from a code, and English law from "immemorial unwritten tradition" is mainly a theoretical distinction (7). Maine's thesis about the origins of the common law is that, "As soon as the Courts at Westminster Hall began to base their judgements on cases recorded, whether in the year books or elsewhere, the law which they administered became written law" (13). To Maine in the nineteenth century, written case-law is "only different from code-law because it is written in a different way" (13); however, to Bracton in the thirteenth century, there is an important distinction between the lex scripta and the lex non scripta, one which he insists upon at the opening of his treatise. Bracton's statement suggests that the unwrittenness of the common law is a defensive gesture against codes and codification (i.e. Roman and French law). Perhaps the subtext of his statement is really the belief that nothing can be contained in, or represented by, writing.

Maine and Bracton's difference of opinion focuses on what Goodrich calls a "fiction of origins" in the law. Goodrich posits that "the law depends upon a geography of mental spaces, which cannot be reduced to its physical presences, its texts (lex scripta), or its apparent rules. The appearance of law is only ever an index or sign, a vestige or relic of anterior or hidden causes" (9-10). For Goodrich, law requires hidden or disguised origins.³ He notes:

A structural principle is operative in legal dogmatics, which attributes causes strictly to an invisible or unconscious order, or to the imagination of the senses (*formae imaginariae*) and in doctrinal terms to the spirit of the law A canonic geography or mapping of law institutes a cartography of those structures, those forms of terror or manipulation that bind invisibly and from within, for they are the measure of that most complex and mixed of spiritual and temporal constructions, namely the presence of an "unwritten law." (9-10)

When a society moves from oral law to written law a profound transformation results as the law becomes "fixed" in codes which require an identifiable origin, that is, they require an "auctor" to give them "auctoritee."

Maine holds that "when primitive law has once been embodied in a Code, there is an end to what may be called its spontaneous development. Henceforward the changes effected in it, if effected at all, are effected deliberately and from without" (17). Thus, codified law has a tendency to become dead or static, removed from the culture. As Jack Goody has noted, in oral societies there is:

an imperceptible process of adjustment of norms in response to external pressures or internal forces. The process is imperceptible because norms have only a verbal, an oral existence, so that rules that are no longer applicable tend to slip out of the memory store. But write down the norms in the form of a code or statute and you then have to make deliberate and conscious efforts to effect any alteration. (139)

Codes get left behind when a society changes, and tend to become devoid of meaning. I would argue that Bracton's insistence on the unwrittenness of English law reflects an attitude strongly held by his culture, that is, an insistence on the common law's "living" potency. Bracton wishes to portray the common law not as an empty vessel or dead receptacle, but as a living entity which cannot be reduced to, or contained within, a text. The common law must have no origin or author except for England herself. The

very essence of the common law is its Englishness, and this sense of identity is tied to the common law's mystical origins within the alchemical vessel of the motherland.

What Bracton reveals in his defiant stance against written law is English culture's resistance to the reduction of the common law to a set of written codes. Bracton, *The Wife of Bath*, and the Canon's Yeoman assert that it is only through "experience" that meaning can be found. The lex non scripta, based as it is on "experience," is thus a living entity, a metaphor of life itself. The potency of the lex non scripta stems from the fact that it is "alive." In contrast, the lex scripta has a tendency to degenerate into impotence. It becomes dead for having been set down and enclosed on the parchment.

Goodrich describes the common law as informed by a sense of loss. This loss, he claims:

would undoubtedly include the loss of its authentic sources, the pristine immemorial law which preceded the inventions of statute, the native common law in the Celtic and later Anglo-Saxon tongues that existed prior to the Danish, Roman, and Norman invasions, the true unwritten constitution which represented an "honest" England that preexisted Europe and its increasingly vocal call to a written law. (7)

Canon law and Roman law (based on Codes) seem to the English as embodiments of verbal and legal impotence. The Continental codes represent an imported language which is potentially empty of meaning and lacking an authentic source. All codes are potentially forms of false representation. What the Yeoman expresses in his Prologue and Tale is his experience of the emptiness of textual representation. The fear of false representation on the inscribed page informs Bracton's treatise and the Canon's Yeoman's Prologue and Tale.

ENDNOTES

¹A translation of Leyden Papyrus X into English can be found in E.R. Caley's "Leyden Papyrus X." The original Greek version is included in M. Berthelot's Collection des anciens alchimistes grecs, vol. 1, 28-51. I have used Caley's translation throughout.

²When mercury is stored in vessels stopped with corks, its vaporisation will inevitably be observed, as the metal works its way into the pores of the cork and beads of the metal drop out when the cork is tapped. It is thus not unlikely that the Yeoman (and Chaucer) would know of this characteristic of the metal.

³The true origins of Bracton's treatise are also disguised and hidden. Much of it was copied directly from Roman legal texts during a time when the study of Roman law was proscribed in England (see: Maine 79). He, thus, disguises not only the Roman origins of his own text, but essentially passes off codified Roman law as the pure unwritten English law.

CHAPTER FIVE

Sir Gawain And The Green Knight And The (In)determinacy Of The Oral Oath

An oral nostalgia prevails in our thoughts about writing--in the idea that spoken discourse is somehow more determinate than written discourse. In the view of Hannah Arendt the movement from a legal system based on sovereignty (oaths) to one based on written bonds (contracts) is one toward a destabilization of legal certainty. She writes, "the danger and advantage inherent in all bodies politic that rely on contracts and treaties is that they, unlike those that rely on rule and sovereignty leave the unpredictability of human affairs and the unreliability of men as they are" (244). Implied in Arendt's statement is the assumption that written bonds are unpredictable, while oral oaths are certain. From this point of view, legal anxieties result when a society shifts from an oral legal system to a written one, since written bonds are open to interpretation in a way that spoken oaths are not in an oral culture.

The social world depicted in Sir Gawain and the Green Knight¹ is based upon the rule and sovereignty of oaths; however, human affairs still remain quite unpredictable and humans rather unreliable. I propose that Sir Gawain challenges the thesis of the certainty of the oral oath by deprivileging the determinacy of oral communication. At the opening of the poem Gawain makes an oral contract face to face with the other party, an agreement based on formulaic and customary usage; yet, he still has no idea what he has agreed to do, or more significantly, whom he has agreed to do it with, as Bertilak is not identifiable either through his use of language

or his signs. Neither the Green Knight nor the oaths entered into with Lord and Lady de Hautdesert can be translated or fully understood by Gawain. Furthermore, the identity of Gawain himself is repeatedly called into question throughout the poem, suggesting that the characters are uncertain of their ability to identify one another. I suggest that the poem raises significant questions about the use of the oral oath in the late fourteenth century, as the poem denies that the oath is a more determinate method of binding parties to an agreement than the written contract.

In his opening address the narrator says of his tale-telling:

I schal telle hit astit, as I in toun herde,
 With tonge.
 As hit is stad and stoken
 In story stif and stronge,
 With lel letteres loken,
 In londe so hatz been longe. (30-36)

In these lines the narrator makes two rather contradictory statements about his source material. He begins by saying that he will tell the story as he heard it, but he modifies this by saying in the next lines that he will tell it as it has been "stad and stoken . . . with lel letteres." These two statements create a question about what form of language, oral or written, sets down and fixes language, and locks it in true letters. As I translate them, the lines suggest the paradox that the story has been set down and fixed, locked with true "letters," for a long time, in an oral tale.

The diction of "stad and stoken" and "loken" imply the fixity of writing, rather than oral tale-telling, and suggest that the narrator will tell it as he read it, not as he heard it. This is confirmed at lines 689-90 when the narrator states, "Mony wylsum way he rode,/ The bok as I herde say." In this later passage hearing is related to

books, not to tongues. The narrator creates in the ambiguous diction of lines 30-36 an oral myth of the certainty of tongues which lock in "lel letteres," only to deflate this myth later in lines 689-90 when we learn that it is a book which has locked the tale in true letters. Turville-Petre notes of these lines:

Gawain is set in an entirely oral context. The narrator is portrayed as an entertainer who has heard the story and, even though (as he goes on to say, ll 33-6) the story exists in written form also, he is merely transmitting it as he heard it The author of the poem--the man who moulded the basic plot-elements into this brilliantly organized structure, and who wrote it down so that scribes could make copies of it--is obviously not giving a portrait of himself. (37)

However, I disagree that lines 33-6 state that the story exists in written form; they seem to state the opposite, or at least leave open the question of whether the story has been locked in true letters in an oral or a written form. J. Gellrich also notes the ambiguity of lines 30-36. He interprets the lines as follows:

"Now" (as-tit) he will begin the public recitation of his script just as it has been told "with tonge," and thus he will avoid the hesitation or interruption always possible in silent reading. Yet his delivery will not be impromptu "Locked" in alliteration, the narrator's words will also be the oral pronunciation of letters linked in cursive script; the spoken will have the quality of words "set down and fastened" in the text "firm and strong." That book is none other than the poem in front of us, the written object presenting itself as the voice of the narrator. So powerful is the narrator's fiction of his speaking that it once led critics to opine that his is a poem "for the ear rather than for the eye." (201-2)

The question of what locks and fastens firmly and strongly, the oral or the written, seems to pervade the narrator's opening address to his readers. This question becomes "a crisis of interpretation" in Sir Gawain, to borrow R.A. Shoaf's term ("Syngne" 154).

While Sir Gawain appears to embody a late medieval nostalgia for the oral, oath-tied past, the poem actually illuminates the indeterminacy of that past, and the

uncertainty of the ties which bind it. This sense of ambiguity is compressed at the conclusion of the poem into the symbol of the lace, a tie which represents an ambiguous set of oaths, and which quickly becomes divested of any meaningful relationship to them. The lace is virtually indecipherable by the conclusion of the poem; it has become an enigma only surpassed by Morgan herself and her sub-entities the Lord and Lady de Hautdesert. In effect, the lace has so many meanings it has no meaning; it is a code with too many possible translations. Like the key players in this drama of signification, the lace is a sign whose multiplicity allows it to elude definition.

The lace which accompanies the third covenant can easily be untied, as is demonstrated by Lady de Hautdesert's quick removal of it from her body. For this reason I argue that the lace is symbolic of the oral bonds which Gawain enters into. The poet entices us to believe at the opening of the poem that "tonges" have locked the story in "lel letteres." Similarly, the whole poem entices us to believe that the oral oaths Gawain enters into are serious and binding covenants which must be upheld for the sake of honour. For this to be the case, we must see the oaths as "true" bonds; but the poem unlocks the oaths and reveals them as part of a treacherous game. If critics have failed in any aspect of their interpretation of this poem I believe it is in under-appreciating the essential treachery and legal insubstantiality of the oral oaths which Gawain enters into and attempts to maintain.²

The poem's characterization of oath-making is, I believe, set up in the fourth line where the "tulk" who wrought the plots of treason at Troy is described. The narrator says that he, "Watz tried for his tricherie, þe trewest on erthe" (4). In this line

there is a play on the word "tricherie" as meaning both "treachery" and also "trickery" (Stratman 620). This word is disjunctively modified by "trewest," so that the "tulk's" is the most true, faithful, virtuous, or trustworthy (Andrew and Waldron 353) of treacheries/trickeries. This sense of trustworthy treachery can be related to Bertilak's apparent virtuousness (his generosity as a host and his reprieve of Gawain) which is actually subordinate to his treachery and trickery towards Gawain in setting up situations of entrapment by oath under Morgan's direction. Bertilak and the Lady may also be tried, by the poet, for "tricherie," for the "treasonous" plot of the poem revolves around the ensnaring quality of the oaths they dictate to Gawain. Thus, while the reader can easily assume that it is Gawain who is on trial in the poem, also implicated in trustworthy treachery are the oath-weilding Lord and Lady de Hautdesert. Hautdesert is a placename which ambiguously signifies, among other possibilities, a superior emptiness or desert, a haughty desertion, or possibly high treason. The key resident of Hautdesert, and the key party in the entire plot, Morgan la Fée, herself is an inexplicable, mythic embodiment of contradictions between "trustworthiness" and "treachery."³

The oral agreements and the lace require an interpretive subtlety which neither Gawain, Arthur's court, nor the reader is completely able to master. Sir Gawain does not privilege oral discourse, nor idealize the legal certainty of an oath-tied past. Rather, the poem expresses an anxiety about the relative uncertainty of traditional ties and bonds. The ultimate message of Sir Gawain, one which the poet's contemporaries

may have been reluctant to hear, is that there is no ideal, mythic, legal past to which society can strive to return.

According to Peter Goodrich the common law itself embodies a nostalgia for the oral past. Goodrich eloquently writes of the common law's pervasive nostalgia for the "loss of its authentic sources, the pristine immemorial law which preceded the inventions of statute, the native common law in the Celtic and later Anglo-Saxon tongues" (7). This nostalgia, he claims, is for the loss of orality. Goodrich posits that the common law, "was a tradition that existed to protect those things that the English value and had always valued. Its constitution was domestic, its law unwritten, its creed a matter of good manners and of doing things as they had always been done" (6). Encroaching radically upon this conception of the common law was the actual situation in the fourteenth century. The law was, in fact, bound up in an overly-complex system of documentation known as the writs. The writ system of pleading made direct access to the courts difficult or impossible for the untrained person. As Norman Doe explains:

in the formative period of the common law (although there were procedures without writ) substantive rules existed only latently within claims that a litigant could put (in his count) before a court, within the writs (those instruments initiating suits in the royal courts) which facilitated these claims, and within the remedies which the writs embodied. The settlement of individual disputes was based not upon the application of rules but upon making an acceptable claim by means of the correct writ As the earliest tracts on the common law indicate, it was the writ system itself which operated as the focal point of legal practice and study. Legal literature expressed and accommodated a law of writs rather than a law of property or a law of contract. The early medieval legal practitioner found the law not in an explicitly stated body of rules, based on legislation and judicial decision, but in the Register of Writs. (1-2)

As Doe suggests, contracts were formed according to what the writ system allowed them to be made upon, and the language of the writ then determined what could be agreed upon. The writ virtually dictated the contract, not the parties entering into it. Law was no longer founded upon customary rules and common sense, but upon the procedural complexities embodied in the Register of Writs.⁴ This system was not how the English ideally wanted to see their common law as deriving or functioning. There was reason in the fourteenth century for a nostalgic view of an oral legal past, one whose sense of "covenant" derived from words spoken in the common tongue by one party to another, rather than from the inscribed Latin of the Register of Writs. As Goodrich claims, "the geneology of common law may well reflect a sense of mourning for . . . the loss of the unwritten" (28).

The form of the oral agreements entered into in Sir Gawain is based on formulaic expressions necessary in an oral legal system. But, even though the agreements between Gawain and the Green Knight/Bertilak are traditional and formulaic in character, they contain elements of the unexpected and the ambiguous which are characteristic of oral communication. As Havelock describes the problem: "in primary orality, relationships between human beings are governed exclusively by acoustics (supplemented by visual perception of bodily behavior) A communication system of this sort is an echo system, light as air and as fleeting" (65). The contrast between the supposed fixity of the ritualized utterance of the formulaic oath and the acoustic situation in which words are as "light as air and as fleeting" underlies the treatment of oath-making in Sir Gawain.

One problematic aspect of the oaths in the poem is the difficulty of identifying the Green Knight through visual perception. As Robert Blanch notes, the Green Knight is "a totally ambiguous character" ("Imagery" 53). Furthermore, it appears that the Green Knight may be as ambiguous to Gawain as to the reader. John Plummer argues that "the essential point of the Green Knight's ambiguous appearance is the ambiguity itself" (199) which presents Camelot "with a challenge in beheading and in the correct use of signs, the latter being the more difficult" (198). Neither the complex signs of the Green Knight nor his "unhuman" character can be adequately comprehended by Gawain at the moment he enters into his agreement with him. One necessary element for a valid contract is that the parties must know the correct identity of the party they are contracting with. According to St. Germain, a valid contract "must be clear and certain" (Dial.II, c.24). It is, therefore, significant that the Green Knight/Bertilak refuses to divulge his identity to Gawain before the oaths are taken, and that even by their final parting at the Green Chapel Bertilak's explanation of his identity is ambiguous and incomplete. With the identity of the Green Knight far from clear and certain, the agreements Gawain enters into with him become so as well.

Later on Gawain discovers that Morgan la Fée has created the oaths and apparently devised and controlled the entire plot. Thus, Gawain has unwittingly entered into bargains with Morgan, not the Green Knight or Bertilak and the Lady. As the plot revolves around a set of interlocking "deals," the language of the business world can best describe the situation. Morgan apparently owns a controlling interest in Bertilak (who may not be an autonomous entity, but a sort of "shadow company"); therefore,

Gawain is unwittingly agreeing to enter into bargains with a hidden party who is even more ambiguous than the party he thinks he is contracting with.

Added to the question of "mistaken identity" is the problem of whether, considering the dramatic nature of the Green Knight's challenge in Arthur's court, Gawain's participation in their first agreement is completely voluntary. Simpson notes that, "duress had been accepted in medieval law as invalidating acts in the law, and there was in principle no reason why cases of *assumpsit* [i.e. contract] involving duress or menace should not have arisen" (*Contract* 537). The fact that the other members of Arthur's court refrain from taking up the Knight's challenge reveals the unwillingness of the court to enter into this exchange. Another hurdle in taking the agreement between Gawain and the Green Knight seriously is that it involves an illegal act, namely murder. Simpson notes that, "in the medieval law of formal contracts it was recognized that illegality in the contract was a ground for holding the contract void" (*Contract* 507). Illegal conditions in an agreement rendered "not only the condition, but also the bond itself void" (Simpson, *Contract* 507). While Blanch and Wasserman's assert that, "the medieval contractual tradition shapes the narrative and delineates the specific rules or promises Gawain violates in the course of his adventure" ("Medieval Contracts" 599), I argue that the agreement the Knight asks the court to enter into is a wager (i.e. a betting transaction) not a formal contract or covenant. For this reason the agreement escapes the necessary requirements for contract formation. Added to the necessity of clarity and certainty are the stipulations that "the thing promised or undertaken must be lawful," "must be possible to be done," "must be cohering, and

agreeing in itself, and with the consideration," and, "must be serious and weighty" (St. Germain, Dial.II, ch.24).⁵

The challenge the Green Knight offers borders on what Simpson calls a "joke contract." As an example he cites a medieval case in which the facts included "a promise in consideration of 12d. to pay £5 to the defendant if the plaintiff does not have him whipped at the cross at Gloucester, and this was held not actionable" (Contract 534). About this judgement Simpson explains:

The case seems close to a wager, but wagers, perhaps the most obvious type of contract which the courts might have refused to recognize on the ground of frivolity, were regarded as actionable at common law. Indeed it is in connection with wagers that the common law first recognized the doctrine that a promise was good consideration for a promise, so that wagering contracts so far from being anomalous have in fact been the source of an important contractual doctrine It never seems to have been argued during our period that wagering contracts were bad at common law either on the ground of mere frivolity or on the ground that their enforcement was contrary to public policy. (Contract 534)

The Green Knight's challenge escapes the problem of a lack of consideration (necessary for a binding agreement), as it offers a promise in return for a promise, and thus follows the form of a wager (i.e. what we would call a bet). The form of the wager is that the Green Knight promises to receive a blow from Gawain if Gawain will promise to receive one from him. While it appears that medieval courts were in favour of upholding wagers, this agreement technically stands somewhere on the border between a formal covenant and a joke contract.

There is apparently dissension in Arthur's court over whether the agreement between Gawain and the Green Knight is a serious and binding covenant. The somewhat cryptic question that "al same segges" ask at Gawain's departure for the

Chapel: "Who knew euer any kyng such counsel to take/ As kn3tez in cauelaciounz on Crystmasse gomnez?" (682-83) reveals that arguments and objections ("cauelaciounz") have been made over the Christmas games. The implication is that there has been something of a "court case" made over the games, likely an attempt to determine whether the wager Gawain entered into with the Green Knight constituted a serious and binding covenant.

While Blanch and Wasserman's interpret the exchange game as "a formal contract with well-defined perimeters of responsibility" ("Medieval Contracts" 603-4), it seems, on the contrary, that Gawain has considerable difficulty determining what his actual "perimeters of responsibility" are. Blanch and Wasserman themselves recognize that the "perimeters" of Gawain's second wager are not very well-defined. They explain Gawain's complex set of reciprocal responsibilities as follows:

In yielding himself contentedly to the lady's will, Gawain creates a network of conflicting obligations; while both he and Lady Bercilak are bound as guest and as wife, respectively, to Bercilak, Gawain has already pledged himself through a formal, publicly sworn ceremony to the will of the host Thus having placed himself at Bercilak's disposal, Gawain may not satisfy the contradictory impulses of the lady. Furthermore, the covenant framed between Gawain and the Knight at Camelot precludes any promise to remain at Hautdesert until Gawain is assured that his stay at Bercilak's castle will not violate his pledged appearance at the Green Chapel. ("To 'Ouertake Your Wylle'" 123)

It seems, then, that Gawain is not very certain about the perimeters of the agreements he has entered into, for his reciprocal responsibilities are virtually undefinable. In his castle the Green Knight/Bertilak for a second time tricks Gawain into entering into a loosely-defined verbal wager with reciprocal obligations that are nearly impossible for

Gawain to comprehend or uphold. The essential part of the contracts which Gawain fails to understand are the obligations created for him by the oaths.

In a society which diligently upholds and maintains hierarchies, the oral oath would, in effect, probably mean what the most powerful person says it means. In Gawain's case, the agreements he enters into with the Green Knight/Bertilak mean what Bertilak says they mean because Bertilak outranks Gawain on a number of levels: socially, metaphysically and psychologically. Bertilak has a psychological advantage in the first situation in Arthur's court as menacing and unnatural intruder, later in his own castle as welcoming and generous host, and finally at the Green Chapel as wielder of life or death judgment over Gawain. In both wagers Bertilak dictates the terms of the agreement to Gawain, thereby controlling the "perimeters" of the oaths. Because of the many advantages of rank Bertilak holds over Gawain's head, he dictates the rules of the wagers, and later interprets the meaning of them for Gawain. The Green Knight/Bertilak is "bigger" than Gawain in more than just a literal sense; thus he and not Gawain apparently interprets the meaning of the wagers. In this regard, the world of the poem is feudal. But, this world and the certainty of its ties are undermined by the poet's treatment of oath-making.

Shoaf has argued that "it is clearly more than just a convenience to speak of a crisis of interpretation in Sir Gawain; indeed, one can argue that the whole plot of the poem follows a succession of such crises" ("Syngne" 154). As one instance of crisis, Shoaf refers to the first wager offered by the Green Knight. He explains that Arthur and Gawain "can only interpret the Green Knight's challenge as implying that he,

Arthur or Gawain, is to strike the blow with the ax, whereas, in fact, the challenge is sufficiently ambiguous to leave open the possibility of Arthur or Gawain critically choosing the 'holyn bobbe' as the weapon to use" ("The 'Syngne of Surfet'" 158-9). I suggest that the case for choosing the "bobbe" is even stronger than Shoaf describes it. The Green Knight makes a point of signifying to the court that he comes in peace, and that the holly bob is the signifier of this intent. As he says to them: "Ȝe may be seker bi þis braunch þat I bere here/ þat I passe as in pes and no plyȝt seche" (265-6). The Green Knight clearly signifies by his words (and his other signs) that what he seeks is not "batyle bare," as Arthur interprets his intent, but a "Crystemas gomen" in which one man will "strike a stroke for anoþer" (282-7). The Green Knight tells Gawain he will "bede þe þis buffet" (381), and "fange at þy fust þat I haf frayst here" (391). Two key words in these phrases, "buffet" and "fust" have double meanings which make the Knight's offer ambiguous. While "buffet" most commonly means, "To beat, strike . . . with the hand; to thump, cuff, knock about" (O.E.D., II, 2nd ed., 625), the M.E.D. offers as an alternative, "a blow struck with a weapon" (Vol.1, 1212). In order to make Gawain's choice of a blow with a weapon the more reasonable, editors of the poem note that "fust" can mean either "hand" or "fist" (Andrew and Waldron 320), thus offering the translation that the Knight wagers to receive at Gawain's "hand" what he has asked for at the court. However, head-chopping would not be the obvious interpretation of a blow for a blow wager of this sort, as both "buffet" and "fust" have far less violent denotations. From this perspective, Arthur's seizure of the axe is a somewhat pathological interpretation of the bargain, as is his belief that the Green

Knight seeks "batayle bare" after he has announced that he comes in peace. Shoaf suggests that it is the "influence" of the Green Knight which makes Arthur and Gawain feel "compelled" to interpret the game in a way which does not take either the issues of criminality or reciprocal obligation into consideration. However, it may be, as well, that Gawain and Arthur are influenced by excessive self-interest to make this interpretation of the Knight's words.

Arthur and Gawain's seizure of the axe is highly self-defeating, but it also reveals their willingness to enter into a one-sided bargain. Gawain believes that he will not have to receive in return what he has given, because the decapitation of the Knight should ensure that Gawain will escape from any reciprocal obligation. By interpreting the bargain in a self-interested way, Gawain seeks to escape from reciprocity. The Green Knight says that he comes in peace to strike a bargain, but allows the court to interpret the terms of the bargain as they wish. They choose to interpret it in a way which is as disadvantageous to the other party, and as advantageous to themselves, as is possible in the situation. Arthur and Gawain understand the bargain to mean that they will not have to deliver the "consideration" offered to the Green Knight. Morgan and Bertilak win the Christmas game because Arthur and Gawain agree to make a bargain that is unconscionable. Morgan apparently foresaw Arthur and Gawain's interpretive stance, predicated upon their eagerness to enter into an unfair bargain. In this way, oath-making is the real and hidden "weppen" Morgan wields over Gawain, and Arthur's court.

Morgan and Bertilak use the interlocking oral oaths to manipulate and ensnare Gawain. In this light, the chivalric oath is, to use Blanch's terms, an "insignia of entanglement" in the poem rather than an "enclosing refuge and comfort" ("Imagery" 54-55). While I agree with Goodlad that "Sir Gawain is essentially about a man (gome) and games (gomnez)" (46), the problem is that these "games" are formulated by chivalric oaths which Gawain and feudal society take very seriously. The "gomnez" play with the crucial links of the feudal social system and cross the line between frivolity and legality. The jokes involve formulaic oaths of a socially sacred nature.

The paradox of "oath" as "game" can be contrasted to Clanchy's comments on the medieval attitude towards documents. Clanchy notes that: "Both to ignorant illiterates and to sophisticated Platonists written record was a dubious gift, because it seemed to kill living eloquence and trust and substitute for them a mummified semblance in the form of a piece of parchment" (From Memory 296-97). The tricky nature of the oaths in Sir Gawain calls into question whether medievalists themselves are sometimes overly influenced by nostalgia for an oral past, as the Gawain-poet appears to be suspicious of the "living eloquence and trust" supposedly found in speech, something Havelock describes as "light as air and as fleeting" (65). I would agree that Sir Gawain and the Green Knight is a work that points to "the potential division within both speech and writing between what is uttered and what is meant" (Gellrich 33).

Shoaf explains that "both Dante and the Gawain-poet depend on a very ancient tradition in which the knot is frequently a figure connected in some way or another with textuality" ("Syngne" 160); however, the knots which Gawain gets himself tied into are

related to orality, not textuality. The "knots" which bind Gawain are the oaths he enters into. Morgan and Bertilak tie Gawain into knots orally by wielding oaths over him. The spoken word in Sir Gawain is the tricky part of the knotting games which entrap Gawain. In both wagers Gawain is forced to make acts of interpretation in a context which does not allow him sufficient freedom of choice or foreknowledge of consequences.

As Shoaf has pointed out, Gawain had a choice of two weapons in the hall in Camelot. However, the most powerful weapon Morgan and the Green Knight wielded in the hall was the oath. Thus, there are three weapons offered in Arthur's hall, and Gawain accepts two of them, the axe and the oath. Similarly, there are a number of ambiguous "gifts" offered by Lady de Hautdesert in the exchange game, and Gawain accepts some of them (the kisses and the lace) while presumably rejecting others. The gift of the lace is accompanied by an oath of secrecy which entraps Gawain in an impossible tangle of reciprocal obligations. Thus, the choice of the lace over the ring is parallel to the choice of the axe over the "bobbe," and the highly problematic oath which accompanies the acceptance of the lace duplicates the original entrapment of Gawain by oath in Arthur's court. Like the Green Knight's oath, which is more dangerous than his other weapons, Lady de Hautdesert's oath of secrecy is more dangerous than her other implicit offers. The real dangers in the poem are not offered by physical weapons such as the axe or the female body, but are contained in the knotty word-games of the oral oaths. These oaths entrap the acceptor of them into a self-

defeating web of obligations to the oath-weilders, the key one of whom remains a hidden party.

In all three instances the terms of the oaths, as dictated by Bertilak and the Lady, create bargains whose terms appear to be one-sidedly in Gawain's favour; however, entering into these one-sided bargains is actually self-defeating for Gawain. In none of the situations does Gawain appear to pay attention to the apparent lack of reciprocity (i.e. "consideration") in the agreement. At the making of the first oath Gawain ignores the signification by statement, gesture, and symbolism of the Green Knight's peaceable intent, in order to make a deal that he believes will not require him to carry through with the consideration. The actual terms of the oath make the Green Knight promise to do something which is humanly impossible, a clear warning sign that Gawain ignores. The second bargain is also one-sided. Bertilak states: "Quatsoeuer I wynne in þe wod hi worþez to yourez/ And quat chek so ȝe acheue chauge me perforne" (1105-6). While "chek" can be glossed as "bad luck" (Andrew and Waldron 248), it has more ominous meanings such as "doom," "onslaught," and "attack." Bertilak thus offers his winnings in exchange for Gawain's bad luck or doom; and again Gawain seeks to take advantage of someone's else apparent willingness to enter into an unequal bargain. While Gawain should be forewarned by Bertilak's use of the word "chek," he again makes a bargain which is seemingly one-sided. Gawain, like those who presented "cauelaciounz" at Arthur's court, knows that these are shady bargains from the outset. While Bertilak and Morgan know that ample consideration will be extracted in return from Gawain, in Gawain's own original understanding of them,

these were inequitable agreements which he should have declined for that reason. Derek Pearsall has referred to Chaucer's Pardoner as "A Salesman" ("Chaucer's Pardoner"), and so, too, is Bertilak. His offers tempt Gawain to doom himself by his own greed. To accept these bargains is shameful, because they tempt the promisee to profit at someone else's expense or misfortune.

The secrecy oath is another offer which is too good to be refused, and again a problem of reciprocal obligation is clear from the outset. Symbolic objects often accompanied the formation of covenants in the Middle Ages, so the lace can be seen as an accompaniment to the covenant of secrecy, the actual "gift" Lady Hautdesert offers Gawain. The acceptance of the oath of secrecy with its accompanying lace (a kind of "seal" for the agreement) is thus a third wager/game that Gawain blindly enters into.⁶ By agreeing to accept the secrecy oath and the lace, a covenant is created between Gawain and the Lady. But when he is forced to reveal the lace to Bertilak, Gawain finds that Lady de Hautdesert has perpetrated the "trewest" "tricherie," by enticing him into another self-defeating bargain. This realization precipitates Gawain's "anti-feminist rant," as the triply-wounded Gawain realizes that the Lady's seduction of him was a cold-hearted trick. Gawain's rant against "other" women is a deflected tirade against the true object of his anger; what he really wants to say he refrains from in front of the Lady's husband. In Bertilak's interpretation of the Lady's actions and words to Gawain, she has perpetrated the most virtuous of treacheries by only pretending to want to seduce Gawain, and even worse, apparently doing so at her husband's request.⁷

As Gawain discovers by this point in the poem, nothing is really locked in true letters orally. The poet undermines the fixity of the oral world he creates within the poem. Sir Gawain suggests that a world based on chivalric oaths is a world of shape-shifting, ambiguity, and verbal entrapment; it is also the world of the travelling salesman's quick and easy, shady bargain. Like the lace which "forms a knot easy to untie" (Shoaf, "Syngne" 160), the oral agreement does not lock, set down, or fix with any certainty; it is the apparent certainty of the oaths which forms the essential element in their "tricherie." In contrast, the writing of the poem locks in "lel letteres" the oral treachery of the oaths Lord and Lady de Hautdesert dictate to Gawain. In this way the poem functions to undermine the fiction of oral certainty. The oaths created by Morgan pull Gawain into an ambiguous and self-defeating network of relationships and reciprocal obligations with "middlemen" whose identity he does not comprehend, and whose existence turns out to be only a false front to hide the party with whom he is really contracting.

The social world of the chivalric oath, tied by the bond of the spoken word, is untied by the written word of Sir Gawain and the Green Knight. As Palmer notes of the period after the Black Death, "In England written contractual arrangements allowed confidence in a broad array of economic and social activities" (62). The confidence given by the written contract now supercedes the uncertainty and ambiguity of the spoken agreement. If oral communication is as "light as air and as fleeting," who can say what was spoken in an oral contract, and if this is determined, who can then interpret the meaning of what was spoken and not spoken, but gestured? The apparent

confidence Gawain has in spoken oaths is unravelled over the course of the poem. In the end, there is very little certainty about what any of the spoken discourse between characters has meant. What has transpired between people is supposedly clearly interpreted by Bertilak, yet his interpretation only reveals an interlocking network of "tricherie." The apparent simplicity and certainty of the oaths is an integral part of their effectiveness as weapons; they seem straightforward at the moment they are made. But, like the Lord and Lady de Hautdesert themselves, the oaths' simplicity is a false front. When the front is stripped away, the treachery of the tongue, embodied in spoken words, is revealed.

The final dénouement of the poem is the revelation by Bertilak that Morgan la Fée has really controlled the action of the plot. From this revelation it appears that Lord and Lady de Hautdesert have not been in control of their gestures or language; thus, by the conclusion of the poem, their words and actions over the course of the plot are impossible to interpret. Jeanne Mathewson has asked about Lady de Hautdesert, "Who knows what the lady really wants?" (215) But the question should really be reflected back to Morgan, for who knows what she really wants? By the conclusion of the poem the gestures, gifts, and words involved in the making of the three oaths are more enigmatic than could possibly have been foreseen. Thus, the reader is entrapped in the same situation as Gawain, of having been unable to predict the meaning of apparently straightforward agreements. Only Morgan apparently has the power to interpret the oaths because she "outranks" everyone else in the poem. As she declines

to speak, the reader and Gawain are left only with Bertilak's explanation of the oaths, and the sense that Bertilak may not understand their true significance.

As Dennis Moore points out:

Morgan's unforeseen emergence as prime mover of the story suffuses the romance with an ambiguity and indefiniteness because of the wide gap between her sudden crucial importance and our scant knowledge of her nature, her motives, and her relationship to other characters. As the reader reconsiders the events of the poem, fitting the memory of their original appearance into a new framework of understanding, new doubts arise. What exactly has been Morgan's role? (226)

While Geraldine Heng asserts that "Morgan's signature in the drama is deciphered by the Green Knight, who unravels it backward to the beginning of the poem's action" (501), this seems a gross overstatement of the actual effect of Bertilak's briefly-stated revelation of Morgan's role. Bertilak "deciphers" almost nothing in his revelation to Gawain. Instead, he creates ciphers where none had seemed to exist before. Bertilak does not himself "unravel" Morgan's "signature in the drama;" rather, he presents surprising revelations which Gawain (and the reader) must attempt to interpret. Morgan, an enigmatic symbol herself, becomes an enigma in the poem, and turns the plot into something of an enigma.

Because Bertilak reveals himself to be a false front for a covert operation by Morgan, his own credibility is seriously undermined. Nothing he has said or done now appears to be an honest expression of his will and desire. As Marie Borroff asks: "It is all very well to accept the Green Knight's judgements at the end of the poem, but for those of us who do so, a further, and formidable, question must be faced. Why should we accept his views? . . . what kind of authority does he represent?" (107) Bertilak's

interpretation of Morgan's motivation for instigating the beheading game is not very convincing, and it does not help to explain subsequent plot developments. Heng refers to Bertilak's explanation as "reasons so apparently tenuous that they require continual scholarly rehearsal" (501). But, rather than arguing, like Heng, against the tenuousness of Morgan's motives as stated by Bertilak, I suggest that the Gawain-poet presents the possibility that Bertilak does not understand what Morgan or the Lady de Hautdesert really want. From this perspective, the poem then revolves around a similar plot as The Wife of Bath's Tale, in which a Knight is set the task of discovering what it is that women desire. This intertextual reference makes the connection between the "old hag" (Morgan) and the "young damsel" (the Lady de Hautdesert) in the castle more suspicious, and adds ammunition to Carson's thesis that they are both Morgan;⁸ for, in The Wife of Bath's Tale the hag is a shapeshifter who is both young and beautiful, old and "loothly." The answer to the Knight's quest is "sovereignty," something which Morgan apparently weilds in an enigmatic fashion.

If Sir Gawain is an exercise in reading women's motives, this reading has to be done literally backwards through the poem from the ending to the beginning. Thus, the work provides a true exercise in "opposite readings." Reading back through the "female plot," whose motivations cannot be adequately explained by Bertilak, the reader is given the task of deciphering the encoded words and gestures in the oath-making situations; yet, the reader cannot be certain of the key to the code. The code to the covert female plot, in contrast to the male plot the poem has apparently been centered around, is not, and cannot be, adequately expressed by Bertilak. The female code

remains a feminine enigma; it cannot be satisfactorily deciphered from the information given.

Despite Sheila Fisher's thesis that Morgan is "on the periphery . . . in this poem" (131), "displaced from the center" and "marginalized" (144), and the poem itself "cleansed of female signification" (144), I would argue that Morgan is dead centre in this work, an enigma so powerful that critics once argued that she effectively "ruined" it.⁹ Morgan certainly ruins any chance of a "straight-forward" reading of the poem, because she symbolizes the treachery of signification. Used as her tool, spoken oaths, with their accompanying gestures and symbolic objects, are weapons of trustworthy treachery within the oral fiction of Sir Gawain and the Green Knight. The author of the work apparently has no nostalgic desire for the "certainty," "purity," and "innocence" of an unwritten legal past (cf. Goodrich).

The Gawain-poet's response to oral contracts may be related to a revolutionary legal situation created by the attempts to enforce the Statutes of Labourers (A.D. 1351). For the first time in English history peasants took their lords to court and asked the justices to uphold oral contracts regarding wages and other issues related to their terms of employment. Stephen Justice has interpreted the use of parole (i.e. oral) contracts by the courts in the enforcement of the Statutes as an attempt to maintain the feudal status quo. He summarizes his source (Putnam) as follows: "parole contracts between lords and their laborers were taken as binding This decision made oral agreements as binding as written contracts, but of course left laborers without appeal to the documentary evidence that the written contract would offer" (37). Justice's

summary of the courts' attitude toward contracts is that, "the content of a parole contract was in effect what the lord said it was" (37). However, Justice gives a rather perverse reading of his stated source material, Bertha Putnam's well-documented study The Enforcement of the Statutes of Labourers. What Putnam's work reveals is quite the opposite of Justice's thesis. While referring to one particular case, Putnam does state that it was found relevant in making the judgement that "the statute had been made for the advantage of the lords" (200); but, overall her research reveals no particular bias by the courts in favour of "masters" over "servants." In Putnam's own words:

The result of these figures is to prove that the courts were perfectly ready to allow to servants or to masters offending against the labour legislation the full advantage of any legal technicalities; but that the juries almost never gave verdicts in favor of servants or even of employers who were charged with infringement of the law. It has already been shown what kind of questions of fact arose in actions for breach of contract; but it has also been admitted that no information has come to my notice as to the necessity of any formality, such as the presence of witnesses, for the validity of the parole agreement between master and servant. If a servant said in court that no such agreement existed, or if a second master claimed a previous contract with the servant, it must have been difficult to establish either the truth or the falsity of the statement. In the existing conditions of the labour market the sympathy of witnesses called in to testify and also of the jurors was likely to be on the side of the plaintiff, while the presumption of guilt was certainly on the side of the defendant. (213)

In the enforcement of the Statutes the justices made the unusual decision to uphold parole agreements, something the common law had traditionally held a very restrictive attitude towards. However, the reliance on oral contracts was not used to uphold feudal power structures, as Justice claims, but helped to defy them.¹⁰ This can be related to an overall trend in the courts' attitude toward contracts after the Black Death. Contract enforcement worked both ways socially, for as Robert Palmer notes, "Just as the

government worried that such high mortality would diminish laborers' desire to work, so they worried that the wealthy would shirk their debts Preservation of traditional society meant that even the upper orders had to live up to their obligations" (59).

Putnam summarizes the evidence of the enforcement of the Statutes of Labourers as follows:

The fact that villeins were being tried and convicted by the justices of labourers exactly like free men, and that they were themselves bringing audacious suits in quarter sessions against their own masters; the fact that these masters evidently preferred to leave to the crown-appointed officials the brunt of the work of enforcing these measures against their tenants whether free or bond, while they themselves merely received the fiscal profits resulting from convictions; these facts, as well as many others, all point in the same direction. The cataclysm of the Black Death had hastened the break-down of the old system and had accelerated changes in economic and social relations throughout the community; the statutes of labourers must be regarded not as having created a new system or a new set of economic relations, but as affording proof that radical changes had occurred, ushering in a new era. (223)

While, as Putnam notes, the nature of the actual parole agreements were virtually impossible to determine, the validation of them by the courts reveal a breakdown in the social hierarchy. Thus, the ambivalence of the Gawain-poet's attitude toward parole agreements may be related to the paradox that while oral contracts created the bonds which tied together the feudal world in which his poem is set, the use of oral contracts in the enforcement of the Statutes of Labourers revealed the demise of feudalism in the world in which he lived.

ENDNOTES

¹The edition of Sir Gawain and the Green Knight referred to is Andrew and Waldron's. Further references will appear as line citations within the body of the text.

²Discussions of legal, especially contractual, elements in Sir Gawain and the Green Knight include: Kathleen M. Ashley, "Bonding and Signification in Sir Gawain and the Green Knight," and "'Trawth' and Temporality: The Violation of Contracts and Conventions in Sir Gawain and the Green Knight"; Robert J. Blanch, "Religion and Law in Sir Gawain and the Green Knight," "The Legal Framework of 'a Twelmonyth and a Day' in Sir Gawain and the Green Knight," and "Imagery of Binding in Fits One and Two of Sir Gawain and the Green Knight"; Robert J. Blanch and Julian N. Wasserman, "To 'ouertake Your Wyll': Volition and Obligation in Sir Gawain and the Green Knight," and "Medieval Contracts and Covenants: The Legal Coloring of Sir Gawain and the Green Knight."

³For a discussion of Morgan as a complex and ambiguous folklore motif see: Edith Whitehurst Williams, "Morgan La Fee as Trickster in Sir Gawain and the Green Knight."

⁴As Robert Palmer notes, "Almost all litigation in the common law courts (the court of common pleas, the court of king's bench, and the exchequer of pleas) began with a writ" (62-30. Much of Bracton's (thirteenth century) treatise On the Laws and Customs of England is given over to describing the proper writs to use in each circumstance.

⁵The legal meaning of "consideration" is remuneration, a necessary element for the formation of a contract.

⁶The seals which legally validated charters were attached to them by laces or strips of parchment. For a discussion of this practice see: M.T. Clanchy, From Memory to Written Record, pp. 308-317.

⁷Or so Bertilak says. For, as Jeanne Mathewson asks, "Who knows what the lady really wants? . . . the Green Knight tells Gawain that he has put his wife up to her tricks, but are we to ignore what the narrator tells us at the time the lady is pursuing Gawain: 'Bot the lady for luf let not to slepe'? (215).

⁸See: Mother Angela Carson, O.S.U., "Morgain la Fée as the Principle of Unity in 'Gawain and the Green Knight'".

⁹Authors who have argued that Morgan is a weak spot or fault in the poem include: J.R. Hulbert, "Syr Gawayn and the Grene Knyȝt,"; G.L. Kittredge, A Study of Sir Gawain and the Green Knight; Albert B. Friedman, "Morgan le Fay in Sir Gawain and the Green Knight"; and Larry D. Benson, Art and Tradition in Sir Gawain and the Green Knight. Dennis Moore in "Making Sense of an Ending: Morgan Le Fay in Sir Gawain and the Green Knight" gives an excellent overview of the reaction of earlier critics to Bertilak's revelation of Morgan's influence on the plot.

¹⁰I believe that Britton Harwood also misinterprets the results of the enforcement of the Statutes when he writes: "Feudalism for our present purpose may be defined as the use of centralized state power to extract the surplus product from the direct producers. (An example of such a use would be the enforcement of the Statutes of Labourers by royally appointed justice of the peace, one of whom was Chaucer)" ("Chaucer and the Silence of History" 340).

CONCLUDING REMARKS

Ian Ward notes in Law and Literature: Possibilities and Perspectives that there are two trends in the field he labels "law and literature studies." One trend examines "law in literature" and the other views "law as literature." He explains:

Essentially, "law in literature" examines the possible relevance of literary texts, particularly those which present themselves as telling a legal story, as texts appropriate for study by legal scholars. In other words, can Kafka's The Trial, or Camus's The Fall, tell us anything about law? "Law as literature," on the other hand, seeks to apply the techniques of literary criticism to legal texts. (3)

In his own work Ward proposes to erase this distinction; however, his delineation of the distinction is limited by his assumption that "law and literature studies" is carried out only by legal scholars. In fact, literary critics have for well over a century delved into the realm of legal research in order to interpret literary works. An early work of this type is C.K. Davis' The Law in Shakespeare, published in 1884, which provides a reference guide to the use of legal terms in Shakespeare's plays. From the nineteenth century onwards the study of "law in literature" has included works which provide an explanation of legal terms and issues in order to illuminate the meaning of literary works.

My own view of the distinctive trends in this field is to differentiate between literary scholars, who tend to use the law to interpret literature, and legal scholars who use literary works in order to explain legal points and issues. One of the best examples of work done by a literary scholar is R. Howard Bloch's Medieval French Literature and Law which illuminates our understanding of French romances by exploring how

they reflect legal issues and tensions within French feudalism. What makes this work so effective is that it manages to be equally informative about French literature as it is about feudal law. At their worst, works by literary scholars adopt a rather simplistic attitude toward legal studies and manage not to be very informative about either law or literature. J.A. Hornsby's Chaucer and the Law stands out as an example of this rather hollow cross-referencing between law and literature.

On the other hand, legal scholars can be highly simplistic in their approach not only to literary works, but towards the discipline of literary studies. Richard Posner's Law and Literature: A Misunderstood Relation offers rather facile interpretations of literary works ranging from the Iliad to Bleak House, and his approach to the study of "law and literature" is marked by oversimplified definitions of "literature" and "literary interpretation." For Posner, "the problems of literary and legal interpretation have little in common except the word 'interpretation'" (17). His central claim is that "it is as important a task of law and literature scholarship to point out the differences between the fields as it is to identify similarities," (17) and he proceeds to do so. After digesting his work, the reader is left to ponder just how meaningful or necessary this gesture is.

On the other hand, the best works by legal scholars provide an equally illuminating discussion of both legal issues and literary works. For instance, Theodor Meron's Henry's Wars and Shakespeare's Laws provides an engaging examination of medieval laws of war and also offers an explanation of how and why Shakespeare altered the facts of history in Henry V. A scholar of international law, Meron's

primary focus is the laws of war; therefore, Shakespeare's drama serves as more of an exemplum than as a main focal point of the work. Nevertheless, Meron's study is equally useful for literary as for legal scholars.

In the preceding chapters my approach to the subject of law and literature has been to depart from the compartmentalization of legal scholarship and literary criticism. I have chosen to focus on the parallel responses of poets and the legal system to the rise of literacy and the increasing use of texts. For instance, while I wished to present a departure in literary criticism by arguing that the Wife of Bath's rhetoric is as legal as it is clerical, the overall goal in the first chapter is to demonstrate how "the power of interpretation" over texts is equally relevant to historical analysis, literary criticism, legal debate and courtroom strategies of pleading. My aim has been to demonstrate that "buried texts" are a parallel source of concern for both poet, legal practitioner, common citizen, and king in the fourteenth century.

While chapter two contains a lengthy exploration of a specific legal issue embedded in a few lines of text, my overall intention is to show how the feudal ideal of the oral oath was being undermined by a profession whose power and status now largely rested in its assumption of "the power of interpretation" over texts. In each chapter it is the concern of the poet with the distinction between lex scripta and lex non scripta, however covertly expressed, which is the focus of my primary interest.

Medieval anxieties about texts and writing informs my discussion of the Pardoner's performance in chapter three. The question is whether legal documents contain a validity on their own, outside of an oral context in which they are created.

The Pardoner's attempt to affirm the power of the text outside of any oral context aligns with legal anxieties about the use of written contracts and agreements. The performance of the Pardoner is disturbing and relevant because his fetishization of texts (an obsessive interest in and submission to their power) reflects the attitude toward the text in medieval Christianity--the cult of the book which arises from the use of the Bible as a sacred icon. In the Pardoner's performance legal anxieties about "the letter of the law" are aligned with theological anxieties about "the letter of the spirit." At the culmination of the Pardoner's Tale the pilgrims and the reader are left with the uneasy sense that the text is more potent than the spirit, and thus come to an understanding of why writing is a source of destabilization in the legal as well as the ecclesiastical sphere.

In chapter four I argue that the Canon's Yeoman's Prologue and Tale serves as a counterbalance to the anxieties about textual power left unresolved at the end of the Pardoner's Prologue and Tale. The Yeoman presents a de-mystification of texts which exposes their emptiness and impotence. The Yeoman claims that the impotence of alchemy, a science based on a long tradition of codification, is the result of textual impotence. The "false and empty code" of alchemy is aligned with the resistance to the idea of legal codification in England. By questioning whether written texts have or can have any authentic source, the Yeoman aligns himself with the English stance that the true law rests not in texts but in experience.

Over the course of the four chapters on The Canterbury Tales the idea of "the power of interpretation" over texts becomes an increasingly complex problem. Chaucer insistently questions whether texts themselves have power, meaning, and authentic

sources. Aside from the Pardoner's "alienating" performance, the overall thrust of the Tales is that meaning does not come from, nor is contained in, texts. Only through "experience," to use the Wife of Bath's term, is meaning to be found; and, as the Wife demonstrates, experience is gained by a negotiation of texts, customs, and personal experimentation. Chaucer aligns himself on the side of the lex non scripta; for him the true law is a living, breathing entity which cannot be enclosed in a written page. A truly potent law for Chaucer is one that is alive in speech and action, not enscribed on parchment. For Chaucer, the letter is always a form of "false representation."

The departure taken in chapter five is away from the Chaucerian questioning of and suspicion about texts and into the Gawain-poet's anti-nostalgic romance where masculine oath-making turns into feminine web-spinning. The entrapment of Gawain in a web of indeterminate oral and social constructions reveals a counter-movement to the nostalgia for a world devoid of "textual deceptions." In Sir Gawain and the Green Knight assuming "the power of interpretation" over the spoken word becomes even more problematic than assuming interpretive power over texts, as the fleeting quality of the speech act allows for indeterminacy about what has been transacted. The real meaning of the oaths in this poem, like the motivations of Morgan, remain indelibly mysterious, for in Sir Gawain and the Green Knight nothing is "with lel letteres loken" orally.

There are few scholarly studies which parallel the form of approach I have attempted in this dissertation. One notable work is Peter Goodrich's Oedipus Lex which presents a psychoanalytical approach to the study of the common law in the post-

Reformation period. His examination of the forces of desire and repression at work in the common law offers extraordinary insights into the cultural entity we call "the law." Not bound by Posner's dictum: "the problems of literary and legal interpretation have little in common except the word 'interpretation'" (17), Goodrich applies the same analytical approach to the law as a literary critic would to a text. The result is, I believe, a groundbreaking work of cultural and historical analysis which examines the common law as, in Foucault's term, a "monument."

Like Goodrich I have attempted not to be bound by categorizations of what constitutes legal and literary analysis and have sought to reveal how limited that form of either/or categorization is. The forces at work creating the medieval common law are the forces at work stimulating the production of poetic works. To distinguish between what is literary and what is legal in the works of Chaucer and the Gawain-poet is futile; their poetry is informed by the same forces which create and interpret laws. What Chaucer and the Gawain-poet say about poetry and literary interpretation in their work is what they also say about law and legal interpretation. It has been my intent in the preceding pages to erase the dichotomy in "law and literature studies" and to demonstrate how meaningless that distinction is. I propose that "the power of interpretation" is the same and is exercised in the same way in all realms of culture.

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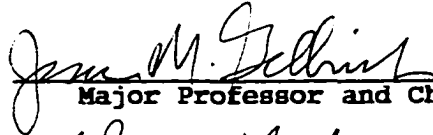
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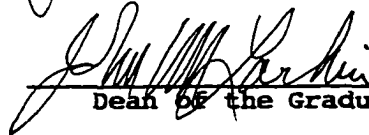
Candidate: Susanne Sara Thomas

Major Field: English

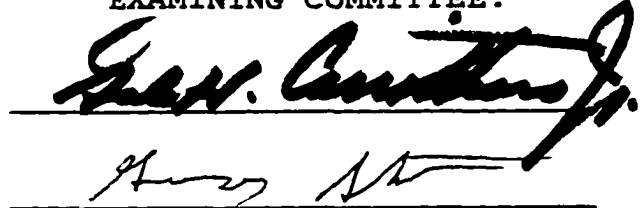
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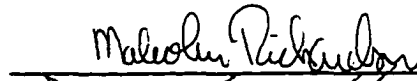
Approved:


Major Professor and Chairman


Dean of the Graduate School

EXAMINING COMMITTEE:







Date of Examination:

March 12, 1997